The dialoges in English, betwene a Doctour of diuinitye, and a Student in the lawes of England, newelye corrected and imprinted wyth new additions.

Cum priuilegio ad imprimendum solum.

1569

Hereafter folowyth the first

Dialoge in Englishe, betwixte a Doctoure of Diuinitie, & a student in the lawes of England, of the grou̅ds of the said lawes, and of conscience.

Newly corrected, and eftsones imprinted wt new addicions.

¶ The Introduction.



A Doctour of diuinitie that was of great acquaintā=ce and familiaritie with a student in the lawes of England, saide thus vn=to him; I haue had great desire of longe tyme to knowe wherevppon the lawe of Englād is grou̅=ded, for because the moste part of the lawe of England is written in frenche tong, therefore I can not (though) mine owne study attaine to the knowledge herof: for in that tong I am nothing expert. And because I haue alwaies found thee a faithfull frend to me in all my busines. Therfore I am bolde to com to thee before anye other to knowe thy minde what bee the verye grou̅des of the lawe of Englande as thou thinkest. Student. That would aske a gret leasure, & it is also aboue my cūning to do it. Neuertheles, y̆ y̆ shalt not thinke y̆ I wold wilfully refuse to fulfil thy desire, I shal in good will doo

that in me is to satisfie thye mynde, but I praye thee that thou wilte first shewe me somewhat of other lawes that pertaine moste to this matter: and that Doctours treat of, howe lawes haue begunne: And then I will gladlye shewe thee as mee thynketh what be the grouds of the law of Englande. D. I will with good will doos as thou sayest: wherefore thou shalt vnderstand that Doctours treat of fower lawes, the whiche (as me semeth) pertayne moste to this matter. The firste is the lawe eternall. The seconde is the lawe of nature of reasonable creatures, the whiche as I haue harde saye, is called by them that be learned in the lawe of England, the lawe of reason. The thirde is the lawe of God. The fowerth is the law of man. And therfore I will first treat of the law eternall.

Of the lawe Eternall.

The first Chapter.

LIke as there is in euerye artificer a reason of suche thinges as are to be made by his crafte, so likewise it behoueth that in euery gouernoure there bee reason and a foresighte in the gouernour of suche thinges as shall be ordered & done by him, to them that hee hath the gouernance of. And for almuch as almightie God is the creator and maker of all creatures, to the whiche hee is compared as a workeman to his workes: And is also the gouernoure of all deedes & mouynges that be founde in any creature: Therefore as the reason of ỹ wisedome of God (inasmuch as creatures bee create by him) hath the reason and foresight of all craftes and woorkes that haue beene

or

or shall bee: so the reason of the wisedome of God mouinge al thinges by wisedome made to a good ende obtaineth the name and reason of a law and that is called the law eternall.

And this lawe eternall is called the first law, and it is well called the first, for it was before all other lawes, and al other lawes be derived of it, whereupon sainct Augustyne sayeth in hys first booke of free arbitrement, that in tempor all lawes nothinge is righteous ne lawful, but that the people haue derined to them oute of the lawe eternal. Wherefore euerye man hath right and title to haue that he hath righteouslye of the righte wise iudgement of the first reason, whiche is the lawe eternall. S. But howe may this lawe eternall bee knowen: for as the Apostle wryteth in the fifte Chapter of his firste Epistle to the Corinthians. Que sunt dei nemo scit nisi spiritus dei. That is to saye, no man knoweth what is in god, but the spirit of god. Wherfore it semeth that he openeth his mouth into heauen that attempteth to knowe it. D. This law eternall no man may knowe as it is in it selfe but onelye blessed soules that see god face to face. But almyghtie God of his goodnes sheweth of it as muche to his creatures as is necessary for them, for els God should bynd his creatures to a thyng impossible: which may in no wise be thoughte in him. Therfore it is to be vnderstād that three maner waies almighty God maketh this law eternal knowen to his creature reasonable.

First by the light of natural reason. Second, by heauenly reuelation. Thirdely, by the order of a

prince or any other secondary gouernor that hath power to bynde his subiects to a law.

And when the lawe eternall or the will of God, is knowen to his creatures reasonable by the lyght of naturall vnderstandyng, or by the lyghte of naturall reason, than it is called the lawe of reason. And when it is shewed by heauenly reuelacion in suche manner as hereafter shall appeare then it is called the law of god. And when it is shewed vnto him by the ordre of a Prynce or of any other secondarye gouernour that hathe power to set a lawe vppon his subiectes, then it is called the lawe of manne, thoughe originallye it be made of God. For lawes made by manne that hathe reteyned thereto power of GOD bee made by God. Therefore the saide three lawes that is to saye: the lawe of reason, the law of god & the law of man, the which haue seuerall names after the manner as they be shewed to man, bee called in god one lawe eternall.

And this is the lawe of whom it is wrytten, Per me reges regnant & legum conditores iusta discernunt. That is to saye, by mee kynges raigne, and makers of lawes discerne the trouthe. And this sufficeth for this time of the lawe eternal.

¶ Of the lawe of reason, the whiche by doctours is called the lawe of nature of reasonable creature.

¶ The .ij. chapter.

Fyrste

FIrste it is to bee vnderstande, that the lawe of nature maye bee considered in twoo manners, that is to saye: generally and specyallye, when it is considered generallye, then it is referred to all creatures, aswell reasonable as vnreasonable, for al vnreasonable creatures lyue vnder a certaine rule to them geeuen by nature, necessarie for them to the conseruacion of theire beyng, but of this lawe it is not oure entente to treate at this time. The lawe of nature specially considered: whiche is also called the lawe of reason, perteineth onelye to creatures reasonable, yt is man whiche is create to the ymage of God.

And this lawe oughte to bee kepte as well amonge Jewes, and Gentylles, as among Christian menne. And thys lawe is alwaye good and rightcous, styrrynge and enclyning a manne to good, and abhorrynge euyll: and as to the orderyng of the dedes of man it ys preferred before the lawe of God. And it is wrytten in the hart of euerye man teachynge him what is to be done and what is to be fled. And because it is written in the heart, therefore it maye not bee put awaye, ne it is neuer chaungeable by noe diuersitie of place ne tyme. And therefore againste this lawe, prescription, statute, nor custome maye not preuaile. And if anye be broughte in againste it, they bee no prescriptions, statutes nor customes, but thinges voide and againste iustice. And all other lawes, aswell the lawes of God as to the actes of menne, as other bee grounded therupon.

The second Chapter.

S. Sith the law of reason is writtē in the harte of euery man, as thou haste said before, teachyng hym what is to be done, and what is to be fled, and tho whiche thou saiest may neuer be put out of the heart: what needed it then to haue anye other law brought in, to order the actes & deedes of the people. D. Thoughe the lawe of reason may not be changed, nor wholye put away, neuertheles before the lawe written it was greatlye let and blinded by euill customes & by manye synnes of the people beside the ozyginall synne, in so muche that it myghte hardelye be discerned what was ryghteous and what was vnryghteous, and what good and what euil, wherefore it was necessarye for the good order of the people, to haue many thinges added to the lawe of reason, alwell by the churche as by secular pryncess accozding to the manners of the countrey and of the people, where suche addicions shoulde be exercised. And this lawe of reason differeth from the law of God in two manners. For the law of God is geuen by reuelacion of god, and this law is geuen by a natural sighte of vnderstandynge. And also the law of God ozdereth a manne of it selfe by a nyghe waye to the felycitye that euer shall endure. And the lawe of reason ozderethe a manne to the felicitie of this lyfe. S. But what be the thinges that the lawe of reason teachethe to be don, and what to be fled: I pray thee shewe mee. D. The lawe of reason teacheth that good is to bee loued, and euill is to bee fled. Also that thou shalt doe to another that thou wouldest another shoulde do to thee. And that wee maye doe

nothing

nothing against trueth. And that a mā must liue peacefully wyth other. That Justice is to bee done to euerye man: and that wrong is not to bee done to any man. And also ỹ a trespasser is worthye to be punished & suche other, of the whyche folow diuers other secondarye cōmaundements the whiche bee as necessarye conclusions deryued of the firste, as of that commaundemente that good is to bee beloued, it followethe that a man shall loue his benefactoure, for a benefactor in that hee is a benefactoure, includeth in hym a reason of goodnesse, for eis he ought not to bee called a benefactoure, that is to saye, a good doer but an euildoer. And so in that hee is a benefactour, hee is to bee beloued in al tymes, and in all places. And this lawe also suffereth many thynges to be done, as that it is lawfull to put away force wych force. And that it is lawefull for euery man to defend himselfe & his goodes agaynste an vnlawefull power. And this lawe renneth with euerye mans lawe, and also wyth the lawe of God, as to the dedes of man, and muste be alwaies kepte and obserued, and shall alwaye declare what ought to followe vppon the generall rules of the lawe of man, and shall restrayne thē if they bee anye thyng contrarye vnto it. And here it is to be vnderstande, that after some men the lawe whereby all thynges were in common was neuer of the lawe of reason, but onelye in the time of extreme necessitie. For they say that the lawe of reason maye not bee chaunged, but they say it is euydent that the lawe whereby all thinges, should be in common is changed, wherfore

Probable.

Common.

fore they conclude that it was neuer the lawe of reason.

Of the lawe of God.

The.iij. Chapter.

The lawe of God is a certaine lawe geuen by reuelation to a reasonable creature shewing hym the will of Godde, wyllynge that creature reasonable to be bounde to doo a thing or not to doo it for obtaynynge of the felycitie eternall. And it is saide for the obtaynyng of the felicitie eternall, to estimate the lawes shewed by reuelacion of God for the politicall rule of the people, the whiche bee called Iudicials. For a lawe is not properlye called the lawe of God becaule it was shewed by reuelation of god, but also becaule it directeth a mā by the neareſt way to the felicitie eternall as beene the lawes of the olde Testamente that beene called Moralles, and the lawe of the Euangelystes: the whych were shewed in muche more excellente manner, then the lawe of the olde Testamente was: for that was shewed by the mediation of an Angel. But the law of the Euangelystes was shewed by the meditacion of our Lord Jesu Christ God & man, and the lawe of god is alway ryghteous and iuste, for it is made and geuen after the wyll of god. And therefore all actes and dedes of man be called righteous and iuste when they bedone accordyng to the law of God and be confirmable to

politicall. Judicials

morall

to it. Also sometime a law made by man: is cal-
led the lawe of god. As when a lawe taketh hys
principall grounde vppon the lawe of god, and
is made for the declaracion or conseruacion of the
faithe, and to put away heresies, as dyuers la-
wes Canons, and also dyuers lawes made by
the common people sometyme dode. The whyche
therefore are rather to be called the lawe of God,
then the law of manne yet neuertheleſſe, all the
lawes Cannon be not the lawes of God. For
manye of them bee made onelye for the politicall
rule and conuersacion of the people, whereuppon
Jhon Gerson in the treatise of the spirituall life
of the soule, the second Lesson, and the thyrde
Corollye, saieth thus. All the Cannons of by-
shops nor their decrees be not the lawe of God.
For many of them bee made onelye for the poli-
ticall conuersacion of the people. And if any man
will saye: Bee not all the goodes of the churche
spirituall: for they belonge to the spirtualtie and
leede to the spirituallye We aunswere: That
in the whole politicall conuersacion of the peo-
ple, there bee some specyallye deputed and de-
dicate to the seruice of GOD, the whyche most
specyallye (as by an excellencie) are called spy-
rituall menne as religions menne are. And o-
ther thoughe theye walke in the waye of GOD,
yet neuertheleſſe, because theire office is moste
specyallye to bee occupied about suche thinges as
pertaine to the common wealth, and to the good
ordre of the people, they bee therefore called se-
culer men or late men neuertheleſſe, the goodes
of the firste maye noe more bee called spirytuall,

then

then the goodes of the other, for they bee thynges mere temporall and keping the bodie as they doe in the other. And by lyke reason lawes made for the politicall ordre of the churche, bee called many times spiritual or the lawes of god. Neuertheiesse, it is but vnproperlye. And other bee called ciuill or the lawes of man. And in this poynte many bee oft times deceiued, and also deceiue other, the whiche iudge the thinges to be spirituall, the whiche all menne knowe bee thinges materyall and carnall. These be the woordes of Jhon Gerson in theyplace alleadged before. Furthermore, beside the lawe of reason and the lawe of manne, it was necessarye to haue the lawe of God for fower reasons. The fyrst because man is ordeyned to the ende of the eternall felicitie the whiche exceedeth the proporcyon and facultie of mannes power. Therefore it was necessarie that beside the lawe of reason and the lawe of man: hee shoulde bee directed to his ende by a lawe made of God. Seconde, forasmuch as for the vncertaynlye of mannes iudgement, specialye of thynges peculiar and seldome fallynge it happeneth ofte times to follow dyuers iudgementes of dyuers menne, and diuersitye of lawes, and therefore to the entente that a manne wythoute anye doubte maye knowe what hee shoulde dooe and what hee shoulde not dooe: It was necessarie that he shoulde bee directed in all his dedes by a lawe heuenly geuen by God the which is so apparant that no man maye swarue fro it, as is the lawe of God. Thirdely, man may onelye make a lawe of suche thynges as hee may

Ciuill

iudge

iudge vpon, and the iudgement of man may not bee of inwarde thinges, but onelye of outwarde thinges, and neuertheleſſe it belongeth to perfection that a manne be well ordered in bothe, that is to ſaye, aſwell inwarde as outward. Therfore it was neceſſarie to haue the lawe of God, the which ſhould ordre a man aſwel of inward thinges as of outwarde things. The fowerth is, becauſe (as ſaint Auguſtine ſaith in the firſt booke of free arbiterment) the lawe of manne maye not puniſh all offences: for if all offences ſhoulde bee puniſhed, the common wealthe ſhoulde bee hurte as is of contractes. For it cannot bee auoyded, but that as long as contractes be ſuffered, many offences ſhall followe therby, and yet they be ſuffered for the common wealth. And therefore that no euil ſhould bee vnpuniſhed, it was neceſſarye to haue the lawe of God that ſhoulde leaue noe euil vnpuniſhed.

¶ Of the lawe of man.
The.iiij. Chapter.

The lawe of man the whiche ſometime is called the lawe poſitiue is dersyued by reaſon as a thinge whiche is neceſſarylye and probable. folowynge of the lawe of reaſon, and of the lawe of god. And that is called probable that appeareth to many, and ſpecially to wiſe menne, to be true. And therefore in euery lawe poſitiue, well made is ſomewhat of the lawe of reaſon, and of the lawe of God, and to diſcerne the lawe of God and the lawe of reaſon fro the lawe poſitiue is verye harde. And thoughe it be hard, yet it

It is muche necessarye in euerye morall doctrine, and in all lawes made for the common wealthe. 1 And that the lawe of man be iuste and rightwise two thinges be necessary, that is to say wisedom 2 and auctoritie, wisedome, that hee may iudge after reason what is to bee done for the communaltie and what is expediente for a peaceable conuersation, & necessarie sustentation of them. Auctoryte that hee haue auctoritie to make lawes. ligare For the lawe is named of Ligare: that is to say, to bynde. But the sentence of a wise manne doth not bynde the communaltie, if he haue no rule ouer them. Also to euerye good lawe bee required these properties, that is to saye, that it behoneste, right wise possible in it selfe, and after the custome of the countrey, conuenient for the place and time, necessarie, profitable, and also manifest that it bee not capcious by anye darke sentence, ne myxte with anye priuate wealthe, but all made for the common wealth. And after sainct Wyget in the fowerth booke in the C. xxix Chapter, euerye good lawe is ordeyned to the health of the soule, and to the fulfyllynge of the lawes of God: and to enduce the people to flye cuyll desires and to doe good woorkes. Also as the Cardynall of Cameret writeth: what soeuer is righteous in the lawe of manne, is ryghteous in the lawe of god: for euery mannes lawe muste be consonant to the lawe of God. And therefore the lawes of princes, the commaundementes of prelates, the statutes of comminalties, ne yet the ordynaunce of the Churche is not righteous nor obligatory but it be consonant to the lawe of God.

And of ſuche a lawe of man that is conſonaint to the lawe of god, it appeareth whoe hathe right to landes and goodes, and whoe not: for whatſoeuer a manne hathe by ſuche lawes of manne hee hathe righteouſlye. And whatſoeuer is had againſt ſuche lawes is vnrighteouſly had.

For lawes of manne not contrarie to the lawe of God, nor to the lawe of reaſon, muſt bee obſerued in the lawe of the ſoule: and hee that deſpyſethe them, deſpyſeth God, and reſiſtethe God, and furthermore, as Gracian ſayeth, becauſe euil men feare to offende for feare of paine. Therefore it was neceſſarye that dyuers paines ſhoulde bee ordeyned for diuers offences, as Phiſitions ordeyned diuers remedies for ſeuerall dyſeaſes. And ſuche paynes bee ordeyned by the makers of lawes after the neceſſytye of the tyme, and after the diſpoſytion of the people. And though that lawe that ordeined ſuche paynes hathe thereby a conformitye to the lawe of GOD: for that the lawe of God commaundeth that the people ſhall take awaye euill from amonge them ſelues, yet they belonge not ſo muche to the lawe of God, butte that other paines ſtanding, the ſtrite principles myght bee ordeyned and appointed, and therfore that is the lawe that is called moſte properly the lawe politique and the lawe of man.

And the Philoſopher ſaide in the thirde booke of his Ethykes, that the entente of a maker of a Lawe is to make the people good, and to bring them to vertue. And though I haue ſome what in a generalitie ſhewed thes wherupon the lawe

lawe of Englande is grounded. For of necessitye it muste be grounded of the saide lawes, that is to saye of the lawe eternal, of the lawe of reason, and of the lawe of God. Neuertheless, I praye thee shewe mee more specialiye whereupon it is grounded as thou thinkest, as thou before haste promised to doo.

S. I will with good wyll doe therein that lyeth in mee, for thou haste shewed me a right playn and a straight way therto. Therefore thou shalte vnderstand that the lawe of Englande is grounded vpon sixe principall groundes. Fyrste it is
1 grounded on the lawe of reason. Seconde on
2 the lawe of God. Thyrdelye, on diuers general
3 customes of the Realme. Fowerthlye of diuers
4 principles / be called Maximes. Fyftlye on dy-
5 uers particuler customes. Sixtlye on dyuers
6 statutes made in parliamentes by the kyng and by the common counsel of the Realme. Of which groundes I shall speake by order as they be rehearsed before, & first of the lawe of reason.

¶ Of the first ground of the lawe of Englande. The. v. Chapter.

The firste ground of the lawe of Englande is the lawe of reason, wherof thou haste treated before in the seconde chapter, the whiche is kepte, in this realme as it is in all other realmes and as of necessitie it muste needes bee as thou haste saide before. D. But I woulde knowe what is called the lawe of nature after the lawes of

Englande

Englande. S. It is not vsed amonge them that bee learned in the lawes of Englande to reason what thinge is commaunded or prohibite by the lawe of nature, and what not, but al ỹ reasoning in that behalf is vnder this maner, as whē anye thing is grounded vpon the law of nature: they say that reason will that such a thing bee doone, and if it be prohibited by the law of nature, they saye it is againste reason or that reason will not suffer that it be done. D. Then I pray the shew mee what they that bee learned in the lawes of the realme holde to be commaunded or prohibite by the law of nature, vnder such termes and after such maner as is vsed amongest them that be learned in the said lawes. S. There bee putt by them that bee learned in the lawes of Englande two degrees of the lawe of reason, that is to say the lawe of reason primarie, and the law of reasō secundarie, by the law of reason primarie be prohibited in the lawes of England, murther, that is the death of him that is innocent, periurie, deceit, bricking of ỹ peace, & manye other like. And by the same lawe also it is lawfull for a man to defend him selfe againste an vniust power so hee kepe due circumstance. And also if anye promise be made by man as to the bodye it is by the lawe of reason voide in the lawes of Englande. The other is called the lawe of secundarie reason the which is deuided into two braunches, that is to say: into the lawe of a secundarie reason general, and into a lawe of secundarie reason particuler. The lawe of a secundarie reasō general is grouñded and deriued of that general law or generall

custome of propertie, whereby goodes moueable & vnmouable be brought into a certeine propertye so that euery man may knowe his owne thinge. And by this braunch be prohibited in the lawes of Englande disseisons, trespasse in landes and goods, rescues, theft, vnlawfull withholding of an other mannes goods and such other. And by the same lawe it is a ground in ỹ lawes of England that satisfaccion must bee made for a trespasse, and that restitucion must be made of suche goods as one man hath that belong to another manne, ỹ dettes must be paide, couenauntes fulfilled, & such other. And because disseasons, trespasse in landes & goodes: theste, and suche other had not beene knowen, if the lawe of propertye had not beene ordeined. Therefore all thinges ỹ be deryued by reason out of the saide law of propertie, be called the law of reason secundary general, for the law of property is generallye kepte in all our countries. The lawe of reason secundary particuler is ỹ lawe ỹ is derined vpõ diũs customes generall and particuler, and of dyuers maximes and statutes ordeined in this realme. And it is called the law of reasõ secundary particuler, because ỹ reason in that case is deryued of such a law that is only holden for law in this realme, & in none other realme.

¶ Addicion.

D. I pray the shew me some special case of such law of reason secundary particuler for an example. S. There is a lawe in Englande, whyche is a law of custome ỹ if a manne take a distresse lawfully ỹ he shal put it in a pounde ouert there

to

to remayn till he be satisfied of that he distrained for. And thē therupō may be asked this quelyō that if ỹ beastes dye in pound for lacke of meate at whose peril dye they, whether dye they at the peril of him that distrained or of him ỹ oweth ỹ beastes? D. If the lawe bee as thou sayest and that a man for a iust cause taketh a distresse and putteth it in the pounde ouerte, and no law compelleth him that distraineth to geue them meate, then it seemeth of reason that if the distresse dye in pounde for lacke of meate that it dyed at the peril of him that oweth the beastes, and not of him that distrained, for in him that distrayned there can be assigned no defaut, but in the other may be assigned a default, because the rent was vnpayde. S. Thou hast geuen a true iudgement and who hath taught the so do so, but reason deriued of the said generall custome. And the lawe is so full of such secundarie reasons deryued out of the general customes and maximes of ỹ realm that some menne haue affirmed that all the lawe of the realme, is the lawe of reason, but that can not be proued as mee seemeth as I haue partlye shewed before and more fully will shewe after. And it is not muche vsed in the lawes of Englande, to reason what lawe is grounded vpon the lawe of the firste reason primarie, or of the lawe of reason secundarye, for they be most commonly openlye knowen of them selfe, but for the knowledge of the lawe of reason secundarye is greater difficultie, and therfore therein depēdeth muche the maner and forme of argumentes in the lawes of Englande.

wild beastes

And it is to be noted that all the deriuing of reason in the lawes of Englande proceadeth of the first principles of the lawe or of some thing ꝑ ys deriued of thē. And therfore no man may rightwisely iudge ne groundly reason in the lawes of England if he be ignorant in the first principles

birdes

Also al birdes, fowles, wilde beastes of forestes, and warren, and suche other bee excepted by the lawes of England out of the saide general lawe & custome of propertie. For by the lawes of the realme no propertie may be of them in any persō vnlesse they be tame. Neuertheless the egges of Hawkes, Herons, or such other as buyld in the ground of any person bee adiudged by the sayde lawes to belong to him that oweth the grounde.

Of the second ground of the lawe of England. The.vi. Chapter.

The second ground of the lawe of England is is the lawe of God & therfore for punishemēt of them that offended against the lawe of God, it is enquired in many courtes in this realme, if any holde any opinions secretelye or in anye other maner against the true catholike faith. And also if any general custome were directly against the lawe of God or if any statut were made directly against it, as if it were ordeined that no almesse should bee geuen for no necessitie that custome & statute were void. Neuertheless ꝑ statute made in the.xxiii. yere of king Edward the iii. whereby it is ordeined that no man vnder paine of imprisonment shal geue any almes to any valiaunt

opinions secretely.

beggers

beggers that may well labour, that they may so be compelled to labour for their liuing is a good statute, for it obserueth the entent of the lawe of God. And also by auctoritie of this lawe ther is a ground in the lawes of England, that he that excoicated is accursed shal mainteine no action in the kinges court, except it be in very fewe cases, so ꝑ ꝑ same excõmunicacion be certified before the kinges iustices, in such maner as ꝑ law of ꝑ realme hath apointed. And by the auctoritie also of this ground ꝑ lawe of Englande admitteth the spiritual iurisdiccion of dismes and offringes. And of all other thinges that of right belong vnto it. And receiueth also all lawes of the church duly made, and that exceade not the power of them ꝑ made thē. In so much in many cases it behoueth the kings iustice to iudge after the lawes of the churche. D. Howe maye that bee that the kynges iustices shoulde iudge in the kinges courtes after the law of the churche, for it seemeth ꝑ the church should rather geue iudgemt in such thinges as it may make lawes of, then the kings iustices. S. That maye bee done in many cases wherof I shall for an example put this case. If a writ of right of warde be brought of the bodye &c. And the tenant confessing the tenour and the nonage of the infaunt, sayeth ꝑ the infaunt was maried in his auncesters daies &c. whcruppon xii. men be sworne which geue this verdict, that the infaunt was maried in the lyfe of his auncestour. And ꝑ the woman in the lyfe of his auncestour sued a diuorce whereupon sentence was geuen that they should be diuorced. And that the

heire appeled which hãgeth yet vndiscussed prai-
yng the aide of the iustice to knowe whether the
infant in this case shalbe saide maried or not. In
this case if the lawe of the churche be ẏ the sayd
sentence of diuorce standeth in his strengthe and
vertue vntil it be adnulled vpon the saide appele,
that the infaunt at the deathe of his auncestoure
was vnmaried because the firste mariage, was
adnulled by that deuorce: And if the lawe of the
churche bee that the sentence of the deuorce stan-
deth not in effect til it be affirmed vpon the saide
appele, thẽ is ẏ infant yet maried, so that the va-
lue of his mariage cannot belong vnto the lorde.
And therefore in this case iugement condicionell
shalbe geuen &c. And in likewise the kinges iu-
stice in many other cases shal iudge after ẏ lawe
of the church like as the spirituall Iudges must
in many cases, fourme their iudgement after the
kinges lawes. D. Howe maye that bee that the
spirituall Iudges shoulde iudge after the kings
lawes, I pray the shew me some certein case ther
of. S. Thoughe it bee somewhat a digression fro
oure firste purpose, yet I will not withsaye thy
desyre, but will with good will putte thee a case
or two therof, that thou mayest the better per-
ceiue what I meane. If A. and B. haue goodes
iointlye, and A. by his last will bequeueth hys
porcion therin to C. and maketh the sayd B. his
executour and dyeth, & C. asketh the execucyon
of this will in the spiritual courte: In thys case
the iudges there bee bounde to iudge that will
to be void, because it is void by the lawes of the
realm. And likewise if a mã be outlawd, & after

by

by his will bequeueth certeine goods to Iohn at Stile, & make his executors and dye, the kynge sealeth the goods & after geueth them againe to the executoures, & after Iohn at Stile sueth a sitacion out of the spirituall court against the executours, to haue execucion of ẏ will, in this case the iudges of the spirituall court must iudge the will to be voide as the law of the realme is, that it is. And yet there is no such lawe of forfeiture of goods by outlagary in the spiritual law.

¶ Of the third ground of the lawe of England. The.vii. Chapter.

The thirde grounde of the lawe of Englande standeth vpon diuers general customes of old time vsed through all the realme, whiche haue bene accepted & approued by our soueraine Lord the king and his progenitors, and all theire subiects. And because the sayde customes be neither against the law of god, nor the law of reason, and haue ben alwaye taken to be good and necessarye for the cōmon welth of al the realme: Therefore they haue obtained the strength of a lawe in so much that he ẏ doth against them, doth agaynst iustice. And these be the customes that properlye be called the cōmō law. And it shal alway be determined by ẏ iustices whether there be any such general custō or not, & not by xii. mē. and of these general custōs & of certain principles ẏ be called maxims which also take effect by the old custōe of ẏ realm, as shal appere in ẏ chap. next folowing depēdeth most part of ẏ lawe of this realme.

And therfore our soueraigne lord the king at his coronacion among other thinges taketh a solēne othe, that hee shall cause all the customes of hys realme faithfully to bee obserued. D. I praye thee shewe me some of these general customes. S. I will with good will, and firste I shall shewe thee how the custome of the realme is the verye grounde of diuers courtes in the realme ꝙ is to say of the chauncerye, of the kinges benche, of the comon place and the Escheker, the which bee courtes of recorde, because none maye sitt as iudges in those courtes but by ꝙ kinges letters, patentes. And these courts haue diuers auctorities, whereof it is not to treat at this time. Other courtes there be also onlye grounded by the custome of the realme, that be of much lesse auctoritie then the courtes before rehearsed, as in euery shire within the realme, there is a court ꝙ is called the countye, and an other that is called the shirifes torne, and in euery maner is a court that is called a court Baron. And to euery faire and market is incident a courte that is called a courte of Pipowders. And though in some statutes is made mencion sometime of the sayde courtes, yet neuertheless of the firste institucion of the saide courtes, & that such courts should be there is no statute nor lawe written in the lawes of England. And so all the ground & beginninge of the sayd courtes depend vpon the custome of the realme, the which custome is of so high auctoritie that the said courtes ne theire auctorities maye not bee altered, ne theire names chaunged without Parliament.

Also

¶ Also by the olde custome of the realme no man shalbe taken imprisoned dissesed nor otherwise destroyed, but he be put to aunswere by the law of the land, and this custome is confirmed by the statute of Magna carta the.xxvi.chapter.

¶ Also by the olde custome of the realme al men great and small shal do and receiue iustice in the kinges courtes, & this custome is confirmed by the statute of Mar.i.chapter.

¶ Also by the old custome of the realme, the eldest sonne is only heire to his auncestour, and if there bee no sonnes but daughters, then all the doughters shalbee heire, and so it is of sisters & other kinswomen. And if there be neither sonne doughter, brother, nor sister, then shall the inheritance discende to the next kinsman or kinswoman of the whole bloude to him ꝑ had the inheritaunce of howe many degrees soeuer they bee from him. And if there bee no heire generall nor spectall then the lande shal eschete to the Lorde of whom the land is holden.

¶ Also by the old custome of the realme landes shal neuer ascende, nor discend from the sonne to to ꝑ father or mother, nor to anye other aūcester in the right lyne, but it shall rather eschete to the Lorde of the fee.

¶ Also if any alien haue a sonne that is an alyen & after is made Denizen & hath an other sonne, & after pourchaseth landes and dieth, the yonger sonne shal inherite as heire and not the eldest.

¶ Also if there be three brethren and the midlest brother purchase Landes and dyeth wythout heire of his body, the eldest brother shal inherite

as

as heire to him, and not the yonger brother.

¶ Also if lande in fee simple discend to a man by the part of his father, and he died without heire of his body, then the inheritance shal discende to the next heire of ỹ part of his father. And if ther be no such heire of the part of his father, then yt the father purchased the landes it shal goe to the nexte heire of the fathers mother, and not to the next heire of the sonnes mother, but it shall rather Eschete to the Lord of the fee. But if a mā purchase landes to him and to his heires, & dye without heire of his body, as is sayde before, thē the land shall discend to the next heire of the part of his father if there be anye, & if not then to the next heire of the part of his mother.

¶ Also if the sonne purchaseth landes in fee and dye without heire of his bodye, the Lande shall discende to his uncle, & shal not ascend to his father, but if the father haue a sonne though it bee many yeres after the death of the elder brother, yet that sonne shall putt out his uncle and shall enioy the lande as heire to hys elder brother for euer.

¶ Also by the custome of the realme the chylde that is borne before spousels is bastarde & shall not inherite.

¶ Also the custome of the realme is that no maner of goods nor catelz real nor ysonal shal neuer go to the heire, but to the executoures, or to the ordinarie or administratours. ¶ Also the husbāde shal haue all the cattels parsonels that hys wife had at the time of the spousels or after, & also chatels reall if he ouer line his wife, but if he

sell

sell or gene awaye the chatels reals & die by that sale or gift the enterest of the wife is determined & els they shal remaine to ỹ wife if she ouer liue her husband. Also the husbande shal haue all the inheritaunce of his wife whereof he was seased in dede in the right of his wife during the spouseis in fee or in fee taile general for terme of life, if he haue any childe by her to holde as tenant by the curtesye of England & the wife shal haue the third part of the inheritāce of her husbād whereof he was seased in dede or in law after the spouseis &c but in ỹ case the wife at the death of her husband must be of the age of.ix.yere or aboue or els she shal haue no dowrie. D. What if ỹ husbād at his death bee within the age of ix.yere. S. I suppose she shal yet haue her dower. C Also the old law & custōe of ỹ realme is ỹ after the death of euery tenant ỹ holdeth his landes by knightez seruice the lorde shal haue the warde & mariage of the heire till the heire come to the age of.xxi. yere. And if the heire in that case be of full age at the death of his auncester, thē he shal pay to hys Lord his relief, which at the common law was not certaine, but by the statut of Magna carta, it is put in certain, that is to say, for euery whole knights fee to pay C.s. And for a whole Barony to pay a C.marke for relief. And for a whole Eriedō to pay a C.li. & after the rate. And if the heire of such a tenant be a woman, and she at the death of her ancester be within thage of.xiiii.yeres thā by ỹ cōmon law she shuld haue ben in ward only till xiiii.yere, but by the statut of Westm the first in such case she shalbe in ward til.xvi. yere

dowrie.

wards.

And

And if at the death of her auncester she be of the age of.xiiii.yere or aboue, she shalbe out of ward though the landes be holden of the king. And thē she shal paie relief as an heire male shall.

¶ Also of landes holden in socage if the ancester dye, his heire being within the age of xiiii. yeres the next frend of the heire to whome the inheritaunce may not discende shal haue the warde of his body and landes till he shall come to the age of.xiiii.yere, and then he may enter. And when ꝑ heire cometh to the age of xxi.yere, then ꝑ gardeī shal peid him accompt for the profits thereof by him receiued.

¶ Also such an heire in socage for his relief shall double his rent to the lorde the yeare followinge the death of his aūcester, as if his auncester held by.xii.ō.rent the heire in the yere folowing shal pay the.xii.ō.for his rent, and other xii.ō.for hys relief. And the relief he must paye though he bee within age at the death of his auncester.

¶ Also there is an olde law and custome in this realme, ꝑ a freholde by way of feffement, gift, or leale passeth not without liuerie of seasō be made vpon the land accordīg though a deede of feffement be therof made & deliuered, but by waye of surrender, partition & eschaunge a freholde may passe without liuerye.

¶ Also if a man make a will of lande wherof he is seased in his demesne as of fee, ꝑ wil is void, but if it had stand in feffes hands it had bē good, And also in London suche a will is good by the custome of the citie if it be inrolled.

¶ Also a leale for term of yers is but a chatel i ꝑ

lawe

law, & therfore it may passe without any liuy of seasō, but otherwise it is of a state for terme of life for ꝑ is a freehold in the law: & therfore liuye must be made therfore or els ꝑ freehold passeth not.

distrey

¶ Also by the old custome of the realme a man may distreine for a rent seruice of comon right. And also for a rent reserued vpon a gift in tayle a lease for terme of life, of peres, & at will, and in such case the lord may distreine the tenauntes of beastes, as sone as they come vpon the grounde, but ꝑ bestes of strangers ꝑ come in but by maner of an escape, he may not distrein til they haue bene leuant & couchant vpon the ground: but for det vpon an obligacion nor vpon a contract, nor for accompt ne pet for arrerages of accompt, nor for no mener of trespas, reparacions, nez suche other no man may distreine.

¶ Also by the olde custome of the realme, all issues that shalbe ioined betwixt party and party in any court of recorde within the realme except a fewe whereof it needeth not to treate at this tyme, must bee tryed by xii. free and lawful men of the visne that be not of affinitie to none of the partes. And in other courtes that bee not of recorde, as in the countye, court baron, hundred, & such other like, they shalbe tryed by the othe of the parties and not otherwise vnlesse the parties assent that it shalbe tryed by the homage. And it is to bee noted that Lordes, Barons, & all peres of ꝑ realm be excepted out of suche tryals if they will, but if they will wilfully be sworne therin, some say it is none errour. And they may if they will haue a writ out of the Chauncerye directed

courtz not of Record

to

to the shirife commaunding him that he shal not impanel them vpon no enquest. And of this that is said before it appeareth ỹ the customes aforesaid nor other like vnto them (wherof be verye many in the lawes of Englād) cannot bee proued to haue the strength of a law only by reason for how maye it be proued by reason that the eldest sonne shal onely inherite his father, and the ponger to haue no part, or that the husband shal haue the whole lande for terme of his lyfe as tenaunt by the curtesie in suche maner as before appeareth: And that the wife shal haue only the thirde parte in the name of her dower, and that the husband shall haue all the goods of his wife as his owne. And that if he dye liuing the wyfe, that his executours shal haue the goodes, & not the wife. All these & such other cannot be proued only by reason that it should be so and no other wise: although they bee reasonable, & that wyth the custome therin vsed suffiseth in the law. And a statute made againste suche generall customes ought to be obserued because they be not merely the law of reason.

strande against reason

¶ Also the lawe of propertie is not the lawe of reason but a lawe of custome how be it that it is kept, and is also right necessarie to be kept in all realmes and among all people. And so it may bee numbred amonge the generall customes of the realme. And it is to vnderstande that there is no statute ỹ treateth of the beginninge of the sayde customes, ne why they should be holden for law. And therfore after them ỹ be learned in ỹ lawes of the realme: ỹ old custome of the realme is the

onely

sniy and sufficiēt auctozitie to them in ꝯ behalf. And I pzay the shew me what doctourcs holde therin, ꝯ is to saye, whether a custome oneiy bee sufficient auctozitie of any lawe. D. Doctourcs holde ꝯ a lawe grounded vppon a custome is the most sureit law, but this thou must alwais vnderstand therwith, ꝯ such a custōe is neither cōtrary to the lew of reason, noz to ꝯ lawe of God. And now I pzay thee shewe me somwhat of the Maximes of the lawe of England whereof thou hast made mencion before in the.iiii. Chapter. S. I will with good will.

¶ Of the.iiii. ground of the lawe of Englād. The.viii. Chap.

The.iiii. grounde of the law of England stendeth in diuers pzinciples that be called in the lawe maximes, the which haue bene alwaics taken foz law in this realme, so that it is not lawfull foz none that is learned to denye them, foz euery one of those maximes is sufficiēt auctozitie to him selfe. And which is a maxime, and which not, shall alway be determined by the iuges, and not by.xii. men. And it nedeth not to assigne any reason, why the were first receiued foz maximes foz it suffiseth that they be not against ꝯ lawe of reason, noz the lawe of god, & that they haue alway be taken foz law. And such maximes be not oneiye holden foz lawe, but also other cases lyke vnto thē & al things ꝯ necessarily folowyeth vpon ꝯ same are to be seduced to ꝯ like law. And therfoze most cōmōly there be assigned som reasōs oz con-

consideracion why such maximes bee reasonable to the entent that other cases like may the more conueniently be applyed to them. And they be of the same strength & effecte in the law as statuts be. And though the general custom of the realme be the strength and warrant of the said maximes as they be of the general customes of the realme, yet because the said generall customes be in maner knowen through the realme aswell to them ỳ be vnlearned as learned, & may lightly bee had and knowen, and that with little study And the maximes be only knowen in the kinges courtes or among them that take great studye in the law of the realme, & among fewe other persõs. Therfore they be set in this writing for seueral grounde and he that listeth may so accoumpt them, or if he will hee may take them for one grounde after his pleasure, of whiche maximes I shall hereafter shew the part.

as statute E.18.

Firste there is a maxime that escuage vncertaine maketh knightes seruice.

Also there is an other maxime ỳ escuage certaine maketh socage.

Also that he that holdeth by castel garde, holdeth by knightes seruice, but hee holdeth not by escuage. And that he that holdeth by .xx.s. to the garde of a castell holdeth by socage.

Also there is a maxime that a discent taketh away an enter.

Also that no prescripcion in landes maketh a righte.

Also that a prescripcion of rent and profittes apprender out of lande maketh a right.

Also

Also that the limitacion of a prescription ge=
nerally taken is tro the time that no mans mind
seemeth to the contrary.

Also that assignes may bee made vppon landes
geuen in fee.for tearme of lyfe, or for termie of
yeres thoughe no mencion bee made of assignes:
and the same law is of a rente that is graunted,
but otherwise it is of a warrantie and of a coue=
naunte.

Also that a condicion to auoide afreeholde
cannot bee pleaded without deede, but to auoid
a gyfte of a chatell it maye bee pleaded without
deede.

Also that a releafe or a confyrmacyon made
by hym that at the tyme of the releafe or confyr=
macion made had no righte is voide in the lawe,
though a righte come to hym after, excepte it be
with warrantie, and then it fhall barre hym of al
ryghte that hee fhall haue after the warrauntye
made.

Also that a right or title of accyon that onely
dependeth in action cannot be geuē nor granted
to none other butte onelye to the tenaunt of the
ground or to hym that hathe the reuercion or re=
mainder of the fame lande.

Also that in an actyon of det vpon a contracte
the def. may wage his lawe, but otherwyfe it is
vpon a leafe of landes for terme of yeares or at
will.

Also that if an exigent in cafe of felonye bee a
warded againft a man: he hath thereby forfeited his goodes to the king.

Also, if the fonne bee attaynted in the lyfe of

the father, and after hee purchaseth hys charters of pardone of the kinge, and after the father dyed: In this case the lande shal eschete to the lord of the fee, in so muche that though he haue a yonger brother, yet the lande shall not discend to him for by the attayndre of ỹ elder brother, the bloud is corrupte, and the father in lawe dyed without heire.

Also, if an Abbot or a Priour aliene ỹ landes of his house and died, in that case, though his successor haue right to the landes, yet hee maye not enter: but he must take his action that is appointed him by the lawe.

Also there is a Maxime in the lawe, that yf a villaine purchase landes and the lorde entre, he shall enioy the land as his own: but if the villeyn aliene before ỹ lord entre, that alienacion is good and the same law is of goodes.

Also if a man steale goods to the value of .xij. d. or aboue, it is felony, & hee shall die for it. And if it be vnder the value of .xij. d. then it is but petite larcinie, & he shall not die for it, but shalbe otherwise punished after ỹ discretion of the Iudges, excepte it bee taken fro the persoune, for yf a man take any thinge, howe lytle soeuer it bee, from a mannes persoune feloniously, it is called robbery, & he shal die for it.

Also he that is arrayned vpon an inditement of felonye shall bee admitted in fauour of lyfe to chalenge .xxxv. iurrours peremptorily, but if he chalenge anye aboue that nomber, the lawe taketh him as one that hath refused the lawe, because hee hathe refused thyee whole enquestes, &

therefore

therefore hee shall dye, but with cause hee maye challenge as many as he hath cause of challenge to. And further it is to be vnderstand, that suche peremptorye challēge shal not be admitted in appele because it is at the suit of the part.

Also the land of euery man is in the lawe enclosed frō other, though it lye in the open fielde. And therefore if a man doe a trespas therein, the writ shalbe quare clausum fregit.

Also that rentes, commons of pastures of turbary reuercions remainders, nor such other thinges whiche lye not in manuell occupacion, may not bee geuen nor graunted to none other without writynge.

Also that hee that recouereth det or damages in the Kinges courte by suche an accion wherin a Capias lay into ỹ processe may within a yere after the recouery haue a Capias ad satisfaciendū to take the body of the defendaunt, and to commit him to prison til hee hath payde the det & damages, but if there lay no Capias in ỹ first accion then the pleintife shall haue no Capias ad satisfaciendum, but must take a fieri facias, or an Elegit within the yere: or a Scire facias after the yere, or within the yere if he will.

Also if a release or confirmacion bee made too hym, that at the tyme of the release made hadde nothing in the lande &c. The release or confyrmacyon is voyde except certeine cases, as too vouchie and certeine other whiche nede not here to be remembred.

Also there is a Maxime in the lawe of Englande, that the kynge may disseyse no manne, ne

that no man maye dissease the kynge ne put any reuersion or remainder out of him.

Also the kynges excellencie is so high in the lawe, that no freholde may be geuen to the kynge ne bee deryued from hym, but by matter of recorde.

Also, there was sometyme a Maxime & lawe in Englande that no manne should haue a writte of right, but by speciall suite to the king, & for a fine to be made in the chaūcery for it. But these Maximes be chāged by the statut of Magna carta, the.xvi. Chapter, wher it is sayd thus Nulli negabimus, nulli vende mus rectum vel iustitiam. And by the wordes nulli negabimus, a man shall haue a writte of ryghte of course in the Chaunterie without suyng to the kyng for it. And by the woordes, nulli vendemus, he shal haue it without fyne: and so many times the old Maximes of the lawe be chaunged by statutes.

Also, though it bee reasonable that for the manifold diuersities of actions that be in the lawes of Englande, that there should bee diuersities of processe, as in the reall accions after one maner and in personal accion after an other maner: yet it cannot bee proued merelye by reason that the same processe ought to be had and none other: for by statute it might bee altered. And so the ground of the said processe is to bee referred onely to the Maximes & customes of the realmes.

And I haue shewed thee these Maximes before rehearsed, not to the entente to shewe thee specially what is the cause of the lawe in them, for that would aske a great respite. But I haue

shewed

shewed them onely to the intent that thou mayst perceiue that the saide Maxymes and other like, may conueniently bee set for one of the grounds of the lawe of Englande. More ouer, there bee dyuers cases, whereof I am in doubt whether they be onely Maxymes of the lawe or that they be grounded vpon the lawe of reason, wherein I pray thee let me here thine opinion.

D. I pray thee shew those cases that thou meanest, and I shall make the aunswere therein as I shall see cause.

¶ Hereafter foloweth diuers cases, wherein the Student douteth whether they be onelye Maxymes of the lawe, or that they bee grounded vpon the lawe of reason.

¶ The .ix. Chapter.

The lawe of Englande is that if a manne commaunde another to dooe a trespasse, and hee dooeth it, that the commaunder is a trespasser. And I am in doubte whether that bee onelye by a Maxyme of the lawe, or that it bee by the lawe of reason.

Also I am in doubte vppon what lawe yt is grounded, that the accessorie shall not bee put to aunswere before the principall &c.

Also, the lawe is that if an Abbot buy a thyng that commeth to the vse of the house, and dyethe that his successours shall be charged. And I am some what in doubte vppon what grounde that

lawe dependeth.

Also that he ꝑ hath possession of land, though it be by disseason hath right against all men, but against him that hath right.

Also that if an accion reall be sued against any mā ꝑ hath nothing in the thing demaunded, the writ shal abate as at the common law.

Also that the alienacion of the tenant hanginge the writ nor his entre into religion, or if hee bee made a knight, or if she be a woman and take an husband hanging the write, that the write shall not abate.

Also if land & rent ꝑ is goinge out of the same land come into one mans hand of like estate and like suertie of title, ꝑ rent is extinct.

Also if land discend to him that hath right to ꝑ same land before, he shalbe remitted to his better title if he will.

Also if two titles bee concurrant together, the eldest title shalbe preferred.

Also that euery man is bounde to make recō-pence for such hurt as his beastes shall do in the corne or grasse of his neighbour, thoughe hee know not that they were there.

Also if the demaundaunt or pleintife hanginge hys writte will enter intoo the thinge demaun-ded, thys writte shall abate. And it is manye tymes verye harde and of greate difficultie to knowe what cases of the lawe of Englande bee grounded vppon the lawe of reason, and what vppon custome of the realme, and thoughe it bee hard to discusse it: it is verye necessarie to be know-en, for the knowlege of the perfit reason of the

lawe

lawe, and if anye man think that these cases be-
fore rehearsed be grounded vppon the law of rea-
son, then he may referre them to the first ground
of the law of England whiche is the law of rea-
son wherof is made mencion in ỹ v. chapter. And
if any manne thinke that they be grounded vpon
the law of custome, then hee may referre them to
the maximes of the law, whiche bee assigned for
the thirde grounde of the law of Englād wher-
of mencion is made in the .viii. cap. as before ap-
peareth.

D. But I pray the shew mee by what auctority
is it proued in the lawes of England ỹ the cases
that thou hast put before in the .viii. chap. & such
other whiche thou calleſt maximes ought not to
be denyed, but ought to be take as maximes for
sith they cannot bee proued by reason as thou a-
greest thy selfe they cannot, they may as lightlye
be denied as affirmed vnlesse there bee sōe suffi-
cient auctoritie to approue them.

S. Many of the customes and maximes of the
lawes of Englande bee knowen by the vse and
the custome of the realme so apparantlye that it
needeth not to haue anye lawe written thereof,
for what needeth it to haue anye lawe wrytten
that the eldest sonne shall enherite hys father,
or that all the doughters shall enherite together
as one heire if there bee no sonne, or that the hus-
band shall haue the goodes & chatels of his wife
that she hath at ỹ time of the spousels or after or
ỹ a bastard shal not inherite as heire or that exe-
cutors shal haue the disposicion of al ỹ goodes of

theire testatour: and if there bee noe executours that the Ordinarye shall haue it, and the heyre shall not meddle with the goodes of hys auncestre: but anye particuler customes helpe hym. The other Maximes and customes of the lawe that be not so openly knowen among the people may be knowen partelie by the lawe of reason: partly by the bookes of the lawes of Englande called yeres of termes, and partly by dyuers recordes remainyng in the kynges courtes and in his treasurye. And specialiye by a booke that is called the Register, and also by diuers statutes, wherein many of the sayd customes & Maximes be oft relyted, as to a diligēt searcher will euidētly appeare.

¶ Of the fifth ground of the lawe of Englande.

The.x. Chapter.

THe fyfthe grounde of the lawe of England standeth in diuers particuler customes vsed in diuers counties, townes, Cities, and Lordeshyppes in thys Realme, the whych particuler customes, because they bee not agaynste the lawe of reason nor the lawe of God, though they be against the sayde generall customes or Maximes of the lawe, yet neuertheleste they stand in effect and be taken for lawe, but if it rise in question in the kynges courtes, whether there bee any such particuler custome or not, it shalbe tryed by .xij. men, and not by the Iudges, excepte

the

the same particuler custõe be of recorde in ỹ same court. Of which particular custões. I haue here after noted some for an example.

Fyrst there is a custome in Kent that is called Gauelkynd, that all the brethren shal inherite to gether, as sisters at the common law.

Also there is another particuler custome, that is called burghenlish, wher the ponger sone shal inherit before the eldest, and that custome is in Notingham.

Also there is a custome in the Cytie of Lõdon that free men there, may by theire testament enrouled bequeth theire landes that they bee ceased of, to whom they wil except to mortmaine. And if they be Citizens and freemen, then they maye also bequeth their lands to mortmaine.

Also in Gauelkind though the father bee hanged the sonne shall inherite. For their Custome is, the father too the boughe, the sonne too the plough.

Also in some countreyes the wyfe shall haue the halfe of the husbandes landes in the name of her dowry as long as she liueth sole.

Also in some countrey the husband shall haue the halfe of the inheritaunce of his wyfe, though he haue no issue by her.

Also in some countrey an infant when he is of age of .xv. yere maye make a feoffement, and the feoffement good. And in some countrey when he can meat an elle of cloth.

¶ Of the first ground of the law of England.

The

The .xj. Chapter.

¶ The .xi. Chapter.

The sixth ground of the lawe of England standeth in diuers statutes made by oure souereygne Lorde the kynge and his progenitoures and by the lordes spirituall & temporall, & the cōmons in diuers parliaments in such cases where the lawe of reason, the lawe of God, customes, maximes ne other groundes of ỳ lawe semed not to be sufficient to punish euil men, & to reward good men. And I remember not that I haue seene anye other groundes of ỳ lawe of Englād, but only these that I haue before remembred.

Furthermore it appearethe of that I haue saide before that oft times two or three groundes of ỳ lawe of England must bee ioyned together, or ỳ the plaintife can open and declare his right, as it maye appere by this example. If a man enter into another mannes lande by force, and after maketh a feoffement for maintenaunce to defraude the pleintife from his accion: In this case it appeareth ỳ the said vnlawful entre is prohibite by the lawe of reason, but the pleyntife shall recouer treble damages, that is by reason of the statute made in the viii. yere of king Henry the vi. ỳ ix. Chapter. And that the dammages shalbe seased by .xii. men, ỳ is by the custome of the realm. And so in this case three groundes of the lawe of Englande maintaine the pleintifes accion.

And so it is in diuers other cases that neede not to be remembred now, and thus I make an end for thys tyme, to speake anye farther of the groundes of the lawe of Englande. D. I thanke

the

thee for the great paine that thou hast take ther-
in, neuertheleſſe for as much as it appeareth that
thou haſt ſaide before, that the learned menne of
the law of England pretende, to verifie that the
lawe of England will nothing doe, ne attempte
againſt the lawe of reaſon, nor the lawe of God,
I praye thee aunſwere mee to ſome queſtyons
grounded vppon the lawe of Englande howe as
thou thinkeſt the lawe may ſtand with reaſon or
conſcience in them.

S. Put the caſe & I ſhal make aunſwere there-
in as wel as I can.

¶ The firſt queſtion of the Doctour of the lawe of Englande and conſcience.

The .xii. Chapter.

I haue heard ſaye, that if a man that is bounde
in an Obligacion paye the money but hee ta-
keth no acquitance or if hee take one and it hap-
peneth him to lee[illegible] that in that caſe hee ſhall
bee compelled by th[illegible]wes of Englande to paie
the money againe, and how may it be ſayed then
that that law ſtandeth with reaſon or conſciẽce,
for as it is grounded vppon the lawe of reaſon,
that dettes ought of right to bee paide, ſo it is
grounded vppon the lawe of reaſon (as mee ſee-
meth) that when they be paide, that he that paid
them ſhould be diſcharged. S. Fyrſte thou muſt
vnderſtande that it is not the law of England,
that if a manne that is bounde in an Obliga-
cyon paye the moneye wythoute acquytaunce

or

or if hee take acquytance and leale it, that therefore the lawe determineth that he ought of right to pay the money eftſones, for that lawe weare both againſt reaſon and conſcience, but thoughe it is that there is generall Maxime in the lawe of England, that in an accion of det ſued vppon an obligacion, the defendant ſhal not pleade that hee oweth not the money, ne can in no wiſe diſcharge him ſelfe in that accion, but hee haue acquytaunce or ſome other wrytynge ſuffycient in the lawe or ſome other thynge lyke, wytneſſyng that he hath payde the money, and that is ordeyned by the lawe to auoyde a greate inconuenynience that elles myght happen to come to many people, that is to ſaye: that euerye man by a nude paroll and by a bare auerment ſhoulde auoyde an obligacion. Wherefore too auoyde that inconuenience the lawe hath ordeined that as the defendaunt is charged by a ſuffycyent wrytyng, that ſo he muſt be diſcharged by ſufficient wrytyng, or by ſome other thing of as highe auctorite as the obligation is. And though it maye folowe thereupon, that in ſome partyculer caſe a man by occaſion of that generall Maxime maye be compelled to paye the money againe that hee payde before: yet neuertheleſſe, noe default canne be therefore aſſigned in the lawe. For like as makers of lawe take hede to ſuche thinges as maye oft fall, and dooe moſte hurte amonge the people rather then to particuler caſes: So in likewiſe the generall groundes of the lawe of Englande hede more what is good for manye, then what is good for one ſinguler perſone onely. And becauſe

it ſhoulde

it shoulde bee a hurte to manye, if an obligacion shoulde be so lightly auoyded by worde, therefore the lawe specialiye preuenteth that hurte vnder such maner as before appeareth. And yet intendeth not nor commaundeth not, that the moneye of ryght ought to be payde againe, but settethe a generall rule whiche is good and necessary to all the people, and that euerye man may well keepe without it be through his owne defaulte. And if such default happen in anye person, whereby hee is without remedy at the common lawe, yet hee may be holpen by a Sub pena, and so he maye in manye other cases where conscience serueth for hym, that were to long to reherce now.

D. But I pray thee shew mee vnder what maner, a manne maye be holpen by conscience. And whether he shall bee holpen in the same courte or in an other. S. Because it cannot bee well declared where a man shall bee holpen by conscience & where not, but if bee firste knowen what conscience is, therefore because it perteyneth too thee moste properlye, to treate of the nature and qualitie of conscience, therefore I pray thee that thou wilt make me some brieke declaracion of the nature and qualitie of conscience, & then I shall aunswere to thy question aswell as I can.

D. I wil with good will dooe as thou sayest, and to the entent that thou mayest the better vnderstande that I shall saye of conscience, I shall firste shewe thee what Synderesis is, and then what reason is, & then what conscience is, and how these three differ among thē selues, I shal soune what touche.

¶ what

The.xiij. Chapter.

¶ What Synderesis is

¶ The.xiij.

SYnderesys is a naturall power of the soule sette in the hyghest part thereof mouynge and sterryng it to good and abhorrynge euill. And therefore Synderesis neuer sinneth nor erreth. And this Synderesis our lord put in man to the intent that the ordre of thinges shoulde be obserued. For after saynt Dionise the wisedome of god ioyneth the beginninge of the second thinges to the laste of the firste thinges, for Angel is of a nature to vnderstand wythout serchyng of reason, and to that nature man is ioyned by Synderesis, the which Synderesis may not wholly bee extincted neither in man ne yet in dampned soules. But neuertheless as to the vse and exercise ther of, it may bee let for a tyme eyther through the darkenesse of ignorannce or for vndiscrete delectation, or for the hardnes of obstinacye. First by the darknes of ignorannce Synderesis maye bee let that it shall not murmure againste euill, because he beleueth euill to bee good, as it is in heretikes, the whiche when they dye for the wyrkednes of theire Errour, beleue that thoye dye for the verye trouth of the fayth. And by vndiscreete delectation, Synderesis is sometyme soo ouerlayde that remorse or grude of conscyence for the tyme can haue no place. For the hardnes of obstinacy Synderesis is also let that it maye not stirre too goodnesse as it is in dampned

soules

soules that bee so obstinate in euill that theye maye neuer bee inclined to good. And though Synderesys maye bee sayde to that poynte extincte in dampned soules: it maye not bee saydethat it is fullye extincte too all intentes. For they alwaye murmure againste the euill of the payne that they suffer for sinne. And so it maye not bee sayde that it is vniuersallye, and to all intentes, and to all tymes extincte, and thys Synderesis is the beginning of all thinges that maye bee learned by speculacion or studye, and mynystreth the generall groundes and pryncyples thereof. And also of all thinges that are to be done by man, an example of suche thynges as many be learned by speculaciō appeareth th⁹: Synderesis saith that euery whole thing is more then anye one parte of the same thynge, and that is a sure grounde that neuer fayleth. And an example of thinges that are to bee doone, or not to be done: as wher synderesis saith no euill is to be done, but that goodnes is to bee done and followed, and euyll to bee fledde and suche other. And therfore Synderesis is called by some men the lawe of reason, for it mynistreth the pryncyples of the lawe of reason, the whiche bee in euery manne by nature in that hee is a reasonable creature.

¶ Of reason.

¶ The. xiiij. Chapter.

When

The. xiiij. Chapter.

When the fyrst manne Adam was create, hee receyued of God a double eye, that is to saye, an outwarde eye, whereby hee might see visible thinges, and knowe hys bodely enemyes and eschew them. And an inwarde eye, that is the eye of the reason, whereby hee myghte see his spirituall enemies that fyghteth agaynste his soule and beware of them. And amonge all giftes that God gaue to man, this gifte of reason is the moste noblest, for therby man precelleth all beastes, and is made lyke to the dignitie of Angelles, discernyng trothe from falshed, and euill from good. Wherefore hee goeth farre from the effect that he was made to when hee taketh not hede to the trouthe, or when hee preferreth euill before good. And therefore after Doctours reason is the power of the soule, that discerneth betweene good and euill, and betweene good and better comparynge the other: the whythe also sheweth vertues, loueth good, and fleeth vyces. And reason is called righteous and good, for it is conformable to the will of God, and that is the firste thing, and the firste rule that all thinges must be ruled by, & reason that is not righteous nor straight: but that is saide culpable, is eyther beecause shee is deceyued wyth an errour that might be ouercome, or elles throughe her pryde or slougthfulnes she enquireth not for knowiege of the trouth that oughte too bee enquired. Also reason is deuided in two parties, that is to saye, into ỹ higher parte and into the lower parte.

The hygher parte hydeth heauenly things and eternall, and reasoneth by heauenlye lawes or by

by heauenly reasons what is to be done, & what is not to bee done, and what thinges God commaundeth, and what he prohibiteth. And thys higher part of reason hath no regard to transitory thinges or temporal thinges: but ꝑ sometime as it were by maner of counsel she bringeth forth heauenly reasons to order wel, temporal things. The lower parte of reason worketh most to gouerne well temporal things. And she grounded her reasons much vpon lawes of man, and vpon reason of man, whereby shee cõcludeth that is to be done, that is honest and expedient to the common welth, or not to be don for it is not expedient to the common wealth. And so that reason wherby I know god and suche thinges as pertaine to god, belongeth to the higheste part of reason. And that reason wherby I know creaturez, belongeth to ꝑ lower part of reasõ. And thoughe these two partes, that is to say, the higher parte and ꝑ lower part be one in dede essence, yet they differ by reason of their working and of their office as it is of one selfe eie, that sometyme loketh vpward, and sometime downwarde.

¶Of conscience. The.xv.Chapter.

THis woord conscience, which in Latin is called Conscientia is compounded of this prepositiõ: cum, that is to say in Englishe, with and with this nowne sciencia, that is to saye in Englishe, knowlege, and so conscięce is as much to say as knowlege of one thing w an other thing, & conscience so taken is nothinge els, but an ap-

plying of any science or knowledge to some par-
ticuler act of mā. And so conscience may somtime
Errors erre & sometime not erre. And of cōsciēce thus ta-
ken, doctours make many descriptions: whereof
one doctour saith, that conscience is the lawe of
our vnderstandyng. Another that conscyence is
an habit of the mynde discernyng betwixte good
and euill. Another that conscience is the iudge-
ment of reason, iudgegyng on the particuler acts
of man, al which saiyngs agree in one effect, that
is to say that conscience is an actual applyinge of
any cunning or knowledge to such thinges as be
done: wherupon it foloweth that vpon the moste
perfit knowledge of any lawe or cunnyng, and of
the most perfyt and most true applying of ỹ same
to any particuler act of man, foloweth the moste
perfit, the most pure, and the most best cōsciēce.
And if there be default in knowing of the truth,
of suche a lawe, or in the applyinge of the same to
particuler act, than therupon foloweth an erroz
or default in conscience, as it may appere by this
example. Hinderilis ministreth a vniuersal prin-
ciple that neuer erreth, that is to say, that an vn
lawful thig is not to be don. And than it might
be taken by some mā that euery oth is vnlawful
because oure lorde saieth Mat.v. ye shall in noe
wise swere. And yet he that by reason of the said
wordes wil hold that it is not lawful in no case
to swere erreth in conscience, for he hath not the
perfit knowledge & vnderstādyng of ỹ trouthe of
the saide gospel, nor he reduceth not the saying of
scripture, to other scripturz in which it is grāted
ỹ in some case an oth may be lawful: & the cause

Why

why conscience may so errre in the saide case, & in other like is because cõscience is formed of a certain particuler proposition or question grounded vpon vniuersal rules ordeined for such thinges as are to be done. And because a particuler propositiõ is not knowen of himselfe, but must appere & be searched by a diligent serch of a reasõ, therfore in the serch & in ẏ conscience that should bee formed therupõ may happẽ to be errour, & therupõ it is said ẏ ther is errour in cõsciẽce, which errour cõmeth either because he doth not assent to that hee oughte to assent vnto, or els because his reasons wherby he doth referre one thinge to an other, is deceyued. For further declaratiõ wherof it is to vnderstand ẏ errour in conscience cõmeth diuersmaner of waies. First is throughignorance: & that is whãt a mã knoweth not what he ought to do, & than he ought to aske cõsel of thẽ that he thinketh most expert in that science whereupon hys doubt ryseth. And if he can haue no counsell than he must wholly comitte him to god: & hee of hys goodnes will so order hym, that hee wyll saue him from offence. The second is throughe negligence, as when a man is negligent to searche his owne conscience, or to enquire the trouth of other. The thirde is throughe pryde, as when he wyll not meken himselfe ne beleue them that bee better and wyser then he is. The fowerth is thorough singularitie as when a man foloweth hys owne wit, and will not conforme hymselfe to other, nor followe ẏ good cõmõ waies of good mẽ. The fift is throughe inordinat affectiõ to himself wherby he maketh cõscience to folowe his desire.

& so he causeth her to goe out of her right course.
6 The sixt is through pusillanimitie whereby ỹ person dredeth oft times such thinges as of reason he ought not to dreede. The seuẽth is through perplexitie, and that is when a mã beleueth himself to be so set betwixt two sinnes that he thinketh it vnpossible, but ỹ he shal fall into the one,
7 but a man can neuer be so propiexed in dede, but through an errour in conscience: and if hee wyll put away that errour he shalbe deliuered. Therfore I pray thee that thou wilt alwaies haue a good conscience, and if thou haue so, thou shalte alwaies be mery, and if thine owne hart reproue thee not, thou shalt alwaies haue inwarde peace. The gladnes of rightwise men is of God and in God, and theire ioy is alwaies in trouth & goodnes. There be many diuersities of cõscience, but there is none better then that, wherby a mã truely knoweth hĩ self. Many mẽ know many great & high cõninge thinges, & yet know not thẽselfe, & truely he that knoweth not himself, knoweth no thing wel. Also he hath a good and cleane conscience, that hath puritie & cleannes in his harte trouth in his worde, & rightwisenes in his dede.
a And as a light is set in a lanterne that al ỹ is in the house may be seen thereby: so almighty God hath set cõsciẽce in ỹ middes of euery reasonable soule as a light wherby he may discerne & know what he ought to doe, and what he ought not to do. Therfore for as much as it behoueth the to be occupied in such things as pertaine to the lawe. It is necessary that thou euer hold a pure and a cleane cõscience, specially in such things as con-

cerne

terme restitucio: for the sinnes is not forgeue, but the thing that is wrongfully taken bee restored. And I counsel thee also ꝑ thou loue that is good and flee that is euil, and that thou doe to another as thou wouldest should bee done to thee, & that thou do nothing to other that thou wouldest not should be done to thee. That thou doe nothinge against trouth, that thou liue peasably with thy neighbour, and that thou do iustice to euery man, as much as in thee is. And also that in euery generall rule of the lawe, thou do obserue and kepe equitie: & if thou do thus, I trust the light of the lanterne, that is thy conscience shal neuer be extinct. D. But I pray thee shewe mee what is that equitie that thou hast spoken of before, and that thou wouldest that I shoulde keepe. D. I will with good will shew thee somewhat therof.

¶ What is equitie. The.xvi.Chapiter.

EQuitie is a rightwilenes that considereth all the perticuler circumstaunces of the deede, the which also is tempered with ꝑ swetenes of mercy. And such an equitie must alway be obserued in euery lawe of man, and in euery generall rule therof, and that knewe he well, that sayde thus. Lawes couet to be ruled by equitie. And ꝑ wyse man saith. Be not ouer muche rightwise: for the extreme rightwilenes is extreme wrong, as who sayth: if thou take al that the wordes of the lawe geueth the, thou shalt somtime do against ꝑ lawe. And for the plainer declaracion what equitie is, thou shalt vnderstand that sith the dedes & actes of

of men, for which lawes beene ordeyned, happen in diuers maners infinitely: It is not possible to make any generall rule of ẏ law, but that it shall faile in some case. And therefore makers of lawes take heede to such things as may often come and not to euerye perticuler case, for they coulde not though they would. And therefore to folowe the woordes of the law, were in cõe case both against iustice and the common welth: wherfore in some cases it is necessarye to leaue the woordes of the law, and to folow that reason and iustice requireth, and to that intent equitie is ordeined: that is to saye, to temper & mittigate the rigoure of the law. And it is called also by some men Epicaia, the which is no other thing but an exception of ẏ lawe of god: or of the law of reason from the generall rules of the lawe of man, when they by reason of their generalitie would in any particuler case iudge against the law of God, or the law of reason, the which exception is secretely vnderstand in euery general rule of euery positiue law. And so it appereth that equitie taketh not away the very right, but only that, ẏ semeth to be right by the general woordes of the lawe, nor it is not ordeined against the crueines of the lawe, for the law in such case generally takẽ is good in hiself, but equitie folowеth the lawe in all particuler cases where right & iustice requireth, notwythstanding ẏ general rule of ẏ lawe bee to the contrarye: wherfore it appeareth ẏ if any lawe were made by a man wout any such exceptiõ expressed or implied it were manifestly vnresonable & wer not toge suffered, for such cases might cõe ẏ he

Epicaia

that

that would obserue that lawe should breake both the lawe of god and the lawe of reason. As if a mā make a vowe that he will neuer eate white meat, and after it happeneth him to come there where he can get none other meat: In this case it behoueth him to breake his auowe, for that particuler case is excepted secretly from his generall auowe by this equitie or Epikay, as it is saide before. Also if a lawe were made in a citie that no man vnder the paine of death should open the gates of the citye before the sunne rysing: yet if the citizēs before that houre flying from their enemies come to ẏ gates of the citie, and one for sauinge of the Citizens openeth the gates before the houre appointed by the lawe, yet he offendeth not ẏ lawe for that case is excepted frō the said geñal lawe, by equitie as is said before: & so it appeareth that equitie rather foloweth the intent of the lawe, thē the wordes of the lawe. And I suppose that there be in likewise some like equities grounded vpō the generall rules of the lawe of the realme. S. ẏe verstye, whereof one is this. There is a generall prohibition in the lawes of Englande: that yt shall not bee lawfull to no man to enter into the freholde of an other without auctoritie of the owner or of the lawe: but yet it is excepted from the said prohibition by the lawe of reason ẏ if a man dryue beastes by the high waye and the beastes happē to escape into the corne of his neighbour: And he to bring out his beastes ẏ they should do no hurt goeth into ẏ groūde fetteth out ẏ beastz: there he shal iustifie that enter into the grounde by the lawe. Also notwithstandinge the statute

of Edward the thirde made the.xiiii.yeare of his raigne whereby it is ordeined that no man vpon paine of imprisonment should geue any almes to any valiaunt begger, that is well able to labour, yet if a man mete with such a valyant begger in so colde a wether and so light apparell, that if he haue no clothes he shall not be able to come to any towne to haue succour, but is likely rather to dye by the way, and he therefore geueth hym apparel to saue his life he shalbe excused of the said statute by such an exception of the law of reason as I haue spoken of. D. I knowe well that as thou saiest he shalbe excepted of the sayde statute by conscience, & ouer that, that he shal haue great reward of god for his good deede, but I wouldo wit whether the partie shalbe also discharged in the common law by such an exception of ỹ lawe of reason or not, for though ignorance vnlineable of a statute excuse the party against god (yet as I haue heard) it excuseth not in ỹ lawes of ỹ realm, ne yet in Chaũcery as some say although the case be so that the party to whome the forfaiture is geuen maye not with conscience leaue it. S. Verely by thy question thou hast put me in a great doubt: wherfore I pray the geue me a respite therin to make the an answer, but as I suppose for the time (howbeit I will not fully affirm it to be as I say) but it should seeme ỹ he should well pleade it for hys discharge at the common lawe, because it shalbe take̅ that it was the intẽt of the makers of the statute to except such eases. And the iudges may manye times iudge after ỹ mynde of the makers as farre as the letter maye

ſuffer & ſo it ſeemeth they may in this caſe. And diuers other exceptions there be alſo from other generall grounds of ỹ law of the realme by ſuch equitie, as thou haſt remẽbred before that were to long to rehearſe now. D. But yet I praye the ſhewe me ſhortly ſõewhat more of thy mind vnder what maner, a man may be holpẽ in this realme by ſuche equitie. S. I will with good will ſhewe the ſomewhat therin.

¶ In what maner a man ſhalbee holden by equities in the lawes of England.

¶ The.xviii. Chapter.

FIrſt it is to be vnderſtãd there be in many caſes diuers exceptions frõ the general groũdes of ỹ law of the realme by other reſonable groũdz of the ſame lawe, wherby a man ſhalbe holpẽ in the cõmon law, as it is of this general grounde, that it is not lawful for no man to enter vpon a diſcent, yet for the reaſonablenes of the lawe excepteth from that ground an infant ỹ hath right and hath ſuffred ſuch a diſcent and him alſo that maketh continuall claime & ſuffereth them to enter, notwithſtanding the diſcent. And of that exception they ſhall haue auantage in the common law, and ſo it is likewiſe of diuers ſtatuts, as of the ſtatute whereby it is prohibite, that certeine pertienler tenants ſhal do no waſt: yet if a leaſe for terme of yeares be made to an infant that ys within yeares of diſcrecion, as of the age of .xx. yeres, & a ſtraunger do waſt, in this caſe this

infaunt

infant shal not be punished for the wast, for he is excepted and excused by the law of reason. And a woman couert to whome such a lease is made after the couerture shalbe also discharged of waste after her husbandes death by a reasonable maxime and custome of the realme. And also for reparacions to be made vpon the same ground, it is lawfull for suche perticuler tenauntes to cutte downe trees vpon the same ground to make reparacions. But the cause there as I suppose ys for that the minde of the makers of the said estatute shalbe taken to be that, that case should bee excepted. And in all these cases ẏ parties shalbee holpen in ẏ same courte & by ẏ cōmō lawe. And thus it appeareth that somwhat a mā may be excepted fro the rigour of a maxime of the lawe by another maxime of the lawe. And sometime fro the rigour of a statute by the lawe of reason: and sometime by the intent of the makers of the statute: but yet it is to be vnderstand that most cōmonly: where any thing is excepted from the generall customes or maximes of the lawes of the realme, By the law of reasō the party must haue his remedy by a writte that is called Sub pena: If a Sub pena lye in the case, but where a Sub pena lyeth, and where not, it is not our intent to treate of at this tyme. And in some case there ys no remedy for such an equitie by way of compulcion, but all remedy therin must be committed to the conscience of the partye. D. But in case where a Sub pena lyeth to whome shall it bee directed: whether to the iudge or to the partye. S. It shall neuer bee directed to the iudge, but to

to the party plaintife or to his atturney & thereupon an Iniunction commaunding them by the same vnder a certain paine therein to be contained that hee procede no farther at the common lawe, til it bee determined in the kinges chauncerye, whether the plaintife hath tytle in conscience to recouer or not. And when the playntyfe by reason of suche an iniunction ceasseth to aske anye farther processe: the Iudges will in lykewise ceasse to make anye farther processe in that behalfe.

D. Is there anye mencion made in the lawes of Englande of anye suche equities. S. Of thys terme equitie to the intent that is spoken of here there is no mencion made in the lawe of England, but of an equitie deriued vpon certaine statutes mencion is made manye times and oftē in the law of Englād. But that equitie is all of another effect then this is, but of the effect of this equitie that we now speake of, mencion is made many times, for it is oft times argued in ẏ law of England where a Sub pena lieth and where not: and daily billes be made by mē learned in the law of the realme to haue Sub penas. And it is not prohibite by the lawe, but that they may wel do it so that they make thē not, but in case where they ought to be made and not for vexacion of ẏ party, but according to the trouth of the matter. And the law will in many cases that there shalbe such remedy in the chancery vpon diuers things grounded vpon such equities, and than the lorde Chaunceller must order his conscience after the rules and groundes of the lawe of the realme,

in

in so much that it had not been inconuenient to haue assigned such remedy in the chauncery vpō such equities for the seuen grounds of the lawe of England, but for as much as no record remaineth in the kinges court of no such bill ne of the writ of Sub pena or iniunction ꝑ is sued thereupon: therefore it is not set as for a special grōnd of the lawe, but as a thing that is suffered by the lawe. D. Then sith the parties ought of ryght in many cases to be holpen in the chauncery vppon such equities. It semeth ꝑ if it were ordeined by statut, that there should be no remedy vpon such equities in the chancery nor in none other place, but that euery matter should be ordered only by the rules and grounds of the common lawe: that that statute were against right & cōscience. S. I thinke the same, but I suppose there is no suche statute. D. There is a statute of that effecte, as I haue heard saye, where I woulde gladlye here thy oppinion. S. Shewe mee that statute and I shall with good will saye as me thinketh therein.

¶ Whether the statute hereafter rehearsed by the Doctour be against conscience or not.

¶ The.xviii.Chapter.

THere is a statut made in the.iiii.yere of kynge Henry the fourth, the.xxii.Chapter. Whereby it is enacted that iugements geuen in the kings courtes, shal not be examined in the chauncerye,

Parlya-

Parliament, nor eis where, by whiche statute it appeareth that if any iudgement be geuen in the kinges courtes against an equitie or against any matter of conscience, that there can be had no remedye by that equitie, for the iudgement cannot be reformed without examinacion, and the examinacion is by the sayde statute prohibite: wherfore it semeth that the saide statute is against cõscience, what is thine oppinion therein. S.

If iudgementes geeuen in the kinges courtes should be examined in the chauncerye before the kinges coũsell or in anye other place, the playnetifes or demaundaunts shoulde seldome come to ꝯ effect of their suite, ne ꝯ law should neuer haue end. And therefore to eschewe that inconueniẽce that statut was made. And though peraventure by reason of that statute, some singuler personne may happẽ to haue lost. Neuertheless the sayde statute is very necessarie to eschewe many great vexacions & iniust expences ꝯ woulde els come to many plaintifes ꝯ haue right wisely recouered in ꝯ kinges courts. And it is much more prouyded for in ꝯ law of England ꝯ hurt nor damages should not come to many than only to one. And also the saide statute doth not prohibite equitye, but it prohibiteth onelye the examinacion of the iudgement for the eschewinge of the inconuenience before rehearsed. And it seemeth that the saide statute standeth with good conscience. And in manye other cases where a man doth wrong, yet he shal not be compelled by waye of compulciõ to reforme it, for many times it must be left to the conscience of the party, whether he wil redresse

dzesse it or not. And in such case he is in cõscience as well bounde to redzesse it if hee will saue hys soule, as he were if he were cõpellable therto by the law as it may appere in diuers cases ỹ may be put vpon the same grounde. D. I pray thee put some of those cases for an example. S. If the defendaunt wage his law in an accion of det brought vpon a true debt, the playnetife hath no meanes to come to his debt by way of compulsiõ, neyther by Sub pena nor otherwise, and yet the defendaunt is bounde in conscience to paye hym. Also if the graũd Jury in attaint affirme a false verdyt, geuen by the pety Jury there is no further remedy but the conscience of the partie. Also wher there can be had no sufficient proofe, there can be no remedy in the chauncery, no more then there may be in the spiritual courte. And because thou hast geuẽ an occaciõ to speke of cõsciẽce, I would gladly here thy oppinon where conscièce shalbe ruled after the law, & wher the law shalbe ruled after conscience. D. And of that matter I would likewise gladly here the opinion, specially in cases grounded vpon the lawes of England, for I haue not heard but litle therof in time past, but before thou put any cases therof: I woulde ỹ thou wouldest shew me how those two questions after thy oppynion are to be vnderstand.

¶ Of what law this question is to be vnderstand: that is to saye, where conscience shalbe ruled after the law

¶ The.xix.Chapter.

The

The lawe wherefore mencion is made in this
questyon, that is to say: wher conscience shal
be ruled by the lawe, is not as mee seemeth
to be vnderstand only of the lawe of reason, and
of the lawe of God, but also of the lawe of man,
that is not contrary to the law of reason, nor the
law of god: but that it is superadded vnto thē for
the better ordering of the cōmō wealth, for such
a lawe of man is alwais to be set as a rule in cō-
science, so that it is not lawfull for a man to goe
fro it on the one side ne on the other: for suche a
lawe of man hath not onely the strength of mans
lawe, but also of the law of reason, or of the lawe
of God wherof it is deryued, for lawes made by
mā whiche haue receiued of god power to make
lawes be made by God. And therfore conscience
must be ordered by that lawe, as it must bee vpon
the law of god, and vpon the lawe of reason. And
farthermore that lawe whereof mencion is made
in the latter end of the Chapter next before that
is to saye, in that question wherein it is asked
where the lawe is to be left and forsaken for con-
science, is not to bee vnderstande of the lawe of
reason nor of the lawe of god: for the twoo lawes
may not be left, nor it is not to be vnderstande of
the lawe of man that is made in particuler cases,
and that is consonant to the lawe of reason, and
to the lawe of god, and that yet that lawe shuld be
left for conscience: for of such a lawe made by man
cōsciēce must be ruled, as it is saide before. Nor
it is not to be vnderstād of a lawe made by mā cō
maunding or prohibiting any thing to be done ꝙ
is against the lawe of reason or the lawe of God.

For

For if any law made by man, binde any ꝑsone to any thing that is agaīst the saide lawes, it is no law, but a corruption and a manifest errour.

Therfore after them that bee learned in ꝯ lawes of England, the said questiō: that is to say where the law is to be left for conscience and where not is to be vnderstand in diuers maners, and after diuers rules as hereafter shal somewhat be touched.

¶ First many vnlearned persons beleue that it is lawful for them to do with good conscience all thinges which if they do them, they shall not be punished therefore by the lawe, though the lawe doth not warrant them to do that they doe, but only when it is done dothe not for some reasonable consideracion punishe him that dothe it, but leaueth it onely to his conscience. And therefore many persons do oft times that they shoulde not do, and kepe as their owne that, that in cōsciēce they ought to restore. Wherof there is in ꝯ lawes of England this case.

¶ If two men haue a wood iointly, and the one of them selleth the wood and kepeth all the money wholye to himselfe. In this case his felow shal haue no remedy against him by the law, for as they when they toke the wood iointlye put eche other in trust, and were contented to occupy together: so the law suffreth them to order ꝯ profits thereof according to the trust ꝯ eche of them put other in. And yet if one toke al ꝯ profites, hee is bound in conscience to restore the halfe to hys felow, for as the law giueth him right onelye to half ꝯ land, so it geueth him right onelye in con-

science

science to ye half profits. And yet neuertheleſſe it cannot be ſaide in that caſe, that the laſwe ys agaīnſt conſcience, for the laſwe neither willeth ne cōmaundeth ye one ſhould take all the profits but leaueth it to theire conſcience, ſo that no defaulte can bee founde in the laſwe, but in him that taketh all the profits to him ſelfe may bee aſſigned default, whych is bounde in cōſcience to reſtore if he wil ſaue his ſoule, though he cannot be cōpelled therto by ye laſw. And therfore in this caſe and other like, that oppinion whyche ſome haue that they may do with conſcience al ye they ſhall not be puniſhed for by the laſw, if they do it, it ys to be left for conſcience, but the laſw is not to bee left for conſcience.

¶ Addicion.

¶ Alſo many men think that if a man haue land that another hath title to, if hee ye hath the right ſhal not by the accion that is geeuen hym by the lawe to recouer his righte by, recouer damages: that then he that hath ye lande is alſo diſcharged of damages in conſcience, and that is a great errour in conſcience, for though hee cannot be compelled to yelde the damages by no mans law, yet he is compelled thereto by the law of reaſon, and by the laſw of God, whereby we be bound to doe as we would be done to, & that we ſhal not couet our neighbors good. And therfore if tenāt in tail be diſſeyſed & the diſſeiſor dyeth ſeyſed, & then ye heire in ye taile bringeth a formedō & recouereth ye lād & no damages, for ye laſw geueth him no dāmage in ye caſe, yet the tenāt by cōſciēce is bound to yeld damages to ye heire in taile fro ye death

of his ancestor. Also it is take̅ by some men, that the law must be left for conscience where the law doth not suffer a man to denye that hee hath before affirmed in court of record, or for ꝑ he hath wilfully excluded him self therof for some other cause, as if the daughter that is only heire to her father, will sue liuerie with her sister that is a bastard, in that case she shal not be after receiued to say that her sister is bastard, in so muche ꝑ yf her sister take halfe the land with her, there is no remedy against her by ꝑ law. And no more there is of diuersitie other estopels, which were to lōg to rehearce now. And yet the party ꝑ maye take auantage of such an estopel by the law is bound in conscience to forsake that aduantage specially if he were so estopped by ignorance, & not by hys own knowledge and assent, for though the lawe in such cases geueth no remedy to him ꝑ is estopped, yet the lawe iudgeth not ꝑ the other hathe right vnto the thinge that is in variaunce betwixt them.

Fisshers bastard Lincio. a

¶ Also it is to vnderstand ꝑ the law is to be left for conscience, where a thing is tried and founde by verdit against the trouth, for in the common law the iudgement must be geeuen according as it is pleaded & tried like as it is in other lawes, ꝑ the iudgement must bee geeuen according to ꝑ that is pleaded & proued.

o

¶ And it is to vnderstād ꝑ ꝑ law is to be left for cōscience, where the cause of the lawe doth cease, for when the cause of the law doth cease, ꝑ lawe also doth cease in conscience, as appeareth by this case hereafter folowing. ¶ Addicion.

A man maketh a leale for terme of lyfe & after a straunger doth waft, wherefore the leſſe bryngeth an accīō of Treſpas & hath iudgemēt to recouer damages hauing regarde to the trebie damages ꝑ he ſhal yeld to him in the reuerſiō. And after he in ꝑ reuerſion before accion of waſt ſued dieth: ſo ꝑ the accion of waſt is thereby extincted then the tenant for terme of life (though hee may ſue execucion of the ſaid iudgement by the lawe) yet he may not do it by cōſcience, for in conſcience he may take no more then he is hurted by ꝑ ſayd treſpas, becauſe he is not charged ouer with the treble damages to his leſſour.

Alſo it is to vnderſtand wher a law is groūded vpon a preſūpcion, for if the preſumpcion be vntrue, then the lawe is not to be holden in conſcyence. And nowe I haue ſhewed thee ſomewhat how ꝑ queſtiō, that is to ſay: where the law ſhall be ruled after conſcience. I praye the ſhewe mee whether there bee not lyke diuerſities in other lawes, betwixt lawe and conſcience. D. Yes verely, very many wherof thou haſt recited one before, where a thinge that is vntrue is pleaded & proued, in whiche caſe iudgement muſt be geuen accordinge as well in the lawe Ciuyle, as in the lawe Canon. And another caſe is that if ꝑ heire make not his inuentorie, hee ſhalbe bounde after the law Ciuile to all the dettes though the goods amount not to ſo much. And the lawe Canon is not againſt that lawe, and yet in conſcyence the heyre whyche in the lawes of Englande is called an executour is not in that caſe charged to ꝑ dettes, but accordyng to the value of the goods.

And now I pray thee shew me sōe cases where conscience shalbe ruled after the law. S. I wyll with good will shew thee somewhat as me thinketh therein.

¶ Here foloweth diuers cases where conscience is to be ordered after the lawe.

The.xx.Chapter.

The eldest sonne shall haue and enioye hys fathers landes at the common lawe in conscyence, as he shal in the law. And in Burghēgilshe the yonger sonne shal enioy the inheritaunce and that in conscīēce. And in Gauelkinde al ꝯ sonnes shal inherite the lande togethere as daughters at ꝯ cōmon lawe & that in cōscience. And there can bee none other cause assigned why conscience in the first case is with the eldest brother, and in ꝯ secounde with the younger brother, and in the third case with all the brethren. But because the lawe of Englande by reason of diuers customes doth sometime geue the land wholy to the eldest sonne, sometyme to the yongest, and sometyme to all.

¶ Also if a man of his mere mocion make a feffement of two acres of land, lying in two seueral shires, & maketh liuerie of seasin in the one acre in the name of both: In this case the feffee hath right but only to ꝯ acre wherof liuerie of seasin was made, because he hath no title by the lawe: but if both acres had ben in one shire he had had good right to both: And in these cases ꝯ diuersity of the law maketh the diuersitie of conscience.

Al-

¶ Also if a man of his mere mocion make a lesse=
ment of a manner and saith not to haue & to hold
&c. with the appurtenaunces, in that case the lesse
hath right to the demesne lands and to the rentes
if there be atturnement and to the common par=
teining to the maner, but he hath neither right to
the aduowsons appendaunt if any bee, nor to the
villeins regardant, but if this terme with thap=
purtenances had bene in the dede, the lesse hadde
right in conscience as wel to the aduowsons and
villeins, as to the residue of the maner, but if the
kyng of hys mere mocion geue a maner with the
appurtenaūces, yet the donee hath neyther ryght
in law nor conscience to the aduowsons nor vyl=
leins, and the diuersitie of the lawe in these cases
maketh the diuersitie of conscience.

¶ Also if a manne make a lease for terme of yeres
yelding to him and to his heires a certaine rente
vpon condicion, that if the rent be behynde by. xl.
daies &c. that then it shalbe lawful to the lessour
& his heires to reentre, And after the rent is be=
hynde the lessour asketh the rent accordyng to the
law & it is not payed, the lessour dyeth hys heire
entreth: In this case his entre is lawful both in
law & conscience: but if the lessour had dyed be=
fore he had demaūded the rent, and his heire de=
maūded the rēt, & betaule it is not payed he reē=
treth in that case his reētre is not lawful nother
in law nor in conscience.

¶ Also if the tenāt in dower sow her land & dye
before the corne be rype, her corne in cōscience be=
lōgeth to her executors, & not to him in the reuer
sion, but otherwise it is in conscience of grasse &

 fruits

fruites. And the diuersitie of the lawe maketh there also the diuersitie in conscience.

Also if a man seysed of Landes in his demesne as of fee, bequetheth the same by his last wyll to another and to his heires and dieth: In this case the heire notwithstandynge the wyll hath ryght to the lande in conscience. And the reason is because the lawe iudgeth that will to be voide, and as it is voide in the law, so is it void in cõsciẽce.

Also if a man graunte a rent for terme of life & make a lease of land to the same graũte for terme of life, and the tenãt alieneth both in fee, In this case he in the reuersion hath good title to the lãd both in lawe and conscience and not to the rente. And the reason is because the land by the alienacion is forfeit by the lawe to him in the reuersion and not the rent.

aliene

¶ Addicion.

Also if Landes be geuen to two men and to a woman in fee, and after one of the mẽ enterma-rieth with the woman, and alieneth the lande & dyeth: In this case the womã hath ryght but only to the third part, but if the man and the womã hath bene maried together before the firste fesse-ment, then the woman notwithstandyng the alienacion of her husbãd should haue had right in law and conscience to the one halfe of the lande. And so in these two cases conscience doth folow the law of the realme. Also if a manne haue two sonnes, one before spousels & another after spou-sels, and after the father dieth seysed of certayne landes, In that case the yonger sonne shal inioy the landes in this realme as heire too his father

frompels.

bothe

both in law & conscience. And ỹ cause is because ỹ sone borne after spousels, is by the law of this realme ỹ very heire, & ỹ elder sone is a bastarde. And of these cases & many other like in the laws of Englād may be formed ỹ Silogisme of cōscience or ỹ true iugemēt of cōscience in this manner. Sinderesis ministreth ỹ maior thus. Rightwise nes is to be done to euery mā, vpō whiche maior ỹ law of Englād ministreth the minor thꝰ. The enheritance belōgeth to the sone borne after spousels, & not to the sone borne before spousels, then cōscience maketh the cōclusion, & sayeth: therfore the inheritance is in cōscience to be geuen to the sonne borne after spousels. And so in other cases infinite may be formed by the law ỹ Silogisme or the righte iudgement of conscience, wherefore they that be learned in the law of the realme say that in euery case where any law is ordeined for the disposition of lands & goods, which is not a= gainst the law of God nor yet against the law of reasō, ỹ the lawe byndeth al them that be vnder the law in the court of conscience, that is to say, in wardly in his soule. And therfore it is somwhat to marueil that spiritual mē haue not indeuoned thē selues in tīes past to haue more knowlege of ỹ kings lawes then they haue dōe, or ỹ they yet do, for by ỹ ignorance therof they be oft times ig= norant of that that shoulde order them accor= dynge to ryghte and iustice, aswell concernynge them selues as other that come to them for cōū= sayle. And now we for asmuche as I haue aun= swered to thy questiōs as well as I can: I pray thee that ỹ wilte shewe me thy opinion in diuers

Silogisme

maior

rationē

spiritualtie

cōmon.

cases formed vpon the law of England wherein I am in doubt, what is to bee holden therein in cõscience. D. Shew me thy questiõs and I will say as me thinketh therein.

¶ The first question of the student.

The .xxi. Chapter.

IF an infaunt that is of the age of xx. yeare and hath reason and wisedome to gouerne him selfe selleth his lande & with the money thereof byeth other land of greater value then the first was, & taketh the profits therof, whether maye that infant aske his first lande again in cõscience, as he maye by the lawe. D. What thynkest thou in that question. S. Me seemeth ỹ forasmuche as the law of Englande in this article is grounded vpon a presumpcion, that is to saye, that infants commonly afore they bee of the age of .xxi. yeares be not able to gouerne them selfe, that yet for asmuch as that presumption falleth in this infant that he may not in this case with conscience aske the lande againe that hee hath solde to his greate auauntage as before appeareth. D. Is not thys sale of the infant & the feffement made therupon if anye were voydable in the lawe. S. Yes verelye. D. And if the feffee haue no ryghte by the bargain, nor by the feffemẽt made therupon: whereby shoulde hee then haue right thereto as thou thynkest? S. By conscience as mee thinketh for the reason that I haue made before D. And vpon what law should that conscience bee groun=

grounded that thou speakest of, for it cannot bee grounded by the lawe of the realme, as thou hast sayd thy self. And me thinketh that it cannot bee grounded vpon the law of god, nor vppon ỹ law of reason, for feoffements nor contractes bee not grounded vpon neither of those lawes, but vpō the law of man. D. After the lawe of propertye was ordeyned, the people might not conueniētly liue together without contractes, and therfore it seemeth that cōtracts be grounded vpon the law of reason, or at least vppon the lawe that is called Jus gentiū. D. Though cōtracts be grounded vppon the lawe that is called Jus gentium, because they bee so necessarie and so generall among all people, yet that proueth not that contractes be grounded vpon the lawe of reasō, for though that law called Jus gentium bee muche necessary for the people yet it may be chaunged. And therefore if it were ordeined by statut that there should be no sale of land, ne no contracte of goods. And if any were ỹ it should be void, so ỹ euery man should continue stil seysed of his lāds and possessed of his goods, the statut were good. And then if a man against that statute solde hys lande for a somme of money, yet the seller might lawfully retaine his lande according to the statute. And then hee were bounde to no more but to repaye the money that hee receiued wyth reasonable expences in that behalfe, and so in lykewyse me thinketh that in thys case the infant may with good conscyence reenter into hys first lande, because the contract after the Maxymes of the lawe of the Realme is voide, for

as

as I haue hard the maximes of the law be of as great strength in the law as statutes. And some thinketh that in this case the infant is bound too no more, but onely to repay ỹ money to him that he sold his lād vnto, with such reasonable costes and charges as he hath sustained by reasō of the same. But if a man sel his land by a sufficient & lawful contract though there lacketh liuerey of seysen or such other solemnities of the lawe, yet the seller is bound in conscience to perfourme the contract, but in this case the contract is insufficient, and so me thinketh great diuersitie betwyxt the cases D. For thys tyme I holde mee cōtented with thy opinion.

¶ The second question of the student.

The .xxij. Chapter.

IF a man that hath landes for terme of lyfe bee impanelled vpon an inquest, & thereuppon leaseth issues & dieth, whether may those issues bee leuied vpon him in the reuersion in cōscience as they may bee by the law D. If they maye bee leuied by the law what is the cause why thou doest doubt whether they may be leuied by cōsciēce D. For there is a maxime in the lawes of England, that where two titles run together, ỹ eldest title shalbe preferred. And in this case the title of him in the reuersion is before the tytle of the forfeiture of the issues. And therefore I dout somewhat whether they may be lawfully leuied.

D.

D. By that reason it seemeth thou art in doubte what the law is in this case, but ẏ must necessarily by knowē, for els it weare in vaine to argue what cōsciēce wil therein. S. It is certaine that ẏ law is such & so it is likewise if the husbād forfeit issues and dye, those issues shal bee leuied on the lands of the wife. D. And if the law be such it semeth ẏ cōsciēce is so in likewise, for sith it is ẏ law ẏ for execuciō of Justice euery man shalbe impanelled when nede requireth it semeth reasonable, ẏ if he wil not appeare ẏ he should haue some punishmēt for his not apperance: for els the law should be clerely frustrate in ẏ point. And ẏ paine as I haue hard is that he shal lese issues to ẏ king for his not apperāz, wherfore it semeth not inconuenient nor against cōscience though ẏ law be ẏ those issues shal be leuied of him in ẏ reuersion, for that condiciō was secretly vnderstād in ẏ lawe to passe wᵗ the lease when the lease was made. And therfore it is for the lessour to beware & to puent ẏ daūger at ẏ making of the lease, or els it shalbe adiudged his own default. And thā this particuler maxime wherby such issues shalbe leuied vpon him in the reuersion is a particuler exception in the law of England frō the generall maxime that ẏ hast remēbred before, ẏ is to say, that where two titles run together, that the eldest title shalbe preferred, & so in this case ẏ generall maxime in this point shal hold no place, nother in law nor in conscience for by this particuler maxime ẏ strength of the generall maxime is restrained to euery entent, that is to say, as well in law as in conscience.

The .xxiij. Chapter.

¶ The third question of the student.

The .xxiij. Chapter.

forwast

IF a tenāt for terme of life, or for terme of yeres do wast wherby they be bound by the lawe to yelde to him in the reuersion treble damages, and shall also forfeit the place wasted, whether is he also bound in conscience to pay those damages, & to restore the place wasted immediatlye after the wast done, as he is in the single damages, or ꝑ he is not bound therto till the treble damages and place wasted be recouered in the kynges courte. D. Before iudgement geuen of the treble damages and of the place wasted he is not bounde in conscience to pay them. For it is vncertaine what he should pay, but it fulfilleth ꝑ he be redy til iugemēt be geuē to yeld damages accordynge to the value of the wast, but after the iudgement geuē, he is boundē in conscience to yelde the treble damages, and also the place wasted. And the same lawe is in all statuts penal, ꝑ is to say, ꝑ no man is bound in conscience to pay the penalty til it be recouered by the lawe. S. Whether maye hee that hath offended agaynst suche a statute penall defende the accion and hinder the iudgement too the intent he would not pay the penalty, but only single damages. D. If the accion bee taken rightwisely accordynge to the statute and vppon a iuste cause the defendaunt maye in no wyse defende the accion, onlesse he haue a true dylatorye matter to pleade, whiche shoulde bee hurtefull to him if he pleaded not, though hee bee not bounde

to pay

ce

to pay the penaltie til it be recouered.

¶ The fowerth question of the student.

The. xxiij. Chapter.

IF a manne infeffe other in certaine land vpon condicion that if hee infeffe anye other: that yt shalbe lawfull for the feoffour and hys heires to reēter &c. whether is this cōdicion good in cōscience though it be voide in the lawe. D. what is the cause why this condicion is voyd in ỹ lawe S. The cause is this, by the lawe it is incident to euery state of fee simple, ỹ hee that hathe the estate may lawfully by the lawe & by the gift of ỹ feoffour make a feoffemēt therof. And thē whē ỹ feoffour restrayneth him after ỹ hee shal make no feffemēt to no man againste his owne former graunt & also againste the puritie of the state of a fee simple, the lawe iudgeth the condicion to be voyde, but if the condicion hadde beene that hee should not haue enfeffed such a man, or such a mā that condicion hadde bene good, for yet he myghe infeffe other.

D. Thoughe the sayde condicion bee agaynste the effect of the state of a fee symple and also agaynste the lawe, Neuertheles it is not against the intent that the parties agreed vpon and that at the tyme of the liuerye. And for as much as the entent of the partie was that if the feffe infeffed any man of the land, ỹ the feffour shoulde enter, & to that intent the feffe toke the state and after

after breake the intent, it seemeth ꝑ the lande in conscience shoulde returne to the feoffour. ℌ.

The intent of the parties in the lawes of Eng-
land is voide in many cases, that is to say, if it be
not ordred according to the lawe. And if a man of
his mere mocion without any recompence inten
ding to geue landes to another and to his heires
make a dede vnto him, whereby he geueth him ꝑ
lands to haue & to holde to him for euer intēding
that by ꝑ worde (for euer) the fesse shoulde haue
the land to him & to his heires, in this case hys
intent is voide, and the other shall haue the land
only for terme of life. Also if a man geue lāds to
another and to his heires for terme of .xx. yeares
intending that if the lessee dye within the terme
ꝑ then his heires should enioy the lande durynge
the terme. In this case his entent is void, for by
the lawe of the realme al chatels reall and perso-
nall shall go to the executors, & not to the heire.
Also if a man geue landes to a manne and to hys
wife, and to ꝑ third parson intending ꝑ euery of
them shoulde take the thirde part of the lande as
iii. comon persons should, his intent is voide, for
the husbād & the wife as one pſō in the law shal
take only the one half & the third parsō the other
halfe, but these cases be alway to be vnderstand
where the said estates bee made without any re-
compence. And for as much as in this principall
case, the intent of the feoffour is groūded against
the lawe: and that there is no recompence ap-
poynted for the feoffement: mee thinketh that the
feoffoure hathe neyther ryght to the land by law
or conscience, for if hee shoulde haue it by consci-
ence

ence ȳ conſcience ſhoulde be grounded vpon the
law of reaſon and that it can not, for condycions
be not grounded vpon the law of reaſon, but vpō
the maxymes & cuſtomes of the realme, and ther-
fore it might be ordeyned by ſtatute, that all con-
diciōs made vpō land ſhould be voide. And whē
a condicion is voide by the maxymes of the law,
it is as fully voide to euerye entent as if yt were
made voyde by ſtatut, & ſo mee thinketh that in
this caſe the feffour hath no right to the lande in
law nor in conſcience. D. I am content thy opi-
nion ſtand till wee ſhall haue hereafter a better
leyſure to ſpeake farther in this matter.

¶ The fift queſtion of the ſtudent.

The xxv. Chapter.

IF a fine with Proclamation bee leuied accor-
dyng to the ſtatute and noe claime made with-
in fiue yeres &c. whether is the right of a ſtran-
ger extincted thereby in conſcience, as it is in the
lawe. D. Vppon what conſideration was that
ſtatute made. S. That the ryghte of landes
and tenementes myght bee the more certaineliye
knowen and not to be ſo vncertain as they were
before that ſtatute. Doctour. And when any
law of man is made for a common wealth, or for
a good peace & quietnes of the people, or for any
inconuenience or hurt to be ſaued from them, that
lawe is good thoughe percaſe it extinct the right
of a ſtranger and muſt be kepte in the courte of

con-

conſcience for as it is ſaid before in ỹ fourth chapiter. By lawes rightwiſelye made by manne, it appereth who hath right to the lands & goods, for whatſoeuer a mā hath by ſuch a law he hath it rightwiſely. And whatſoeuer hee holdeth againſt ſuch a law he holdeth vnrightwiſely. And furthermore as it is ſaide there, all lawes made by man which be not contrarie to the law of god muſt be obſerued and kept, & that in conſcience.

And he that deſpiſeth them, deſpiſeth God, and he that reſiſteth them reſiſteth God. Alſo it is to be vnderſtande that poſſeſſions, and the right thereof bee ſubiect to ỹ lawes, ſo that they therfore with a cauſe reaſonable maye bee tranſlated and altered from one man to another, by the acte of the lawe. And of thys conſideracion that law is grounded that by a contracte made in fayres and markettes, the propertie is altered excepte the propertye be to the kinge, ſo that the byer paye tolle, or doe ſuch other thinges as is accuſtomed there to be done vpon ſuch contractes and that the byer knoweth not the former property. And in the lawe Ciuile there is a like law that if a man haue another mannes good with a title tii.pere, thinking that hee hath right to it: Hee hath the very right vnto the thing, and that was made for a law to ỹ entēt ỹ the property & right of things ſhould not be vncertaine: and that variance & ſtrieke ſhoulde not be among the people. And foraſmuch as the ſaid ſtatut was ordeyned to geeue a certaintie of title in the landes and tenementes compriſed in the fyne: It ſeemeth that that fine extincted ỹ title of all other, as well in con-

conſcięce as it doth in the law. And ſith I haue ās wered to thy queſtiō I pray the let me know thy mynde in one queſtyon concernynge tailed landes, and thā I will trouble thee no farther at thys time.

¶ A queſtion made by ỹ Doctour, how certaine recoueries that be vſed in the kynges courtes to defete tayled lande may ſtande with conſcience.

The.xxvi.Chapter.

Tattarum's case 1473

I Haue harde ſaye that when a man that is ſeyſed of landes in the tayle ſelleth the lande: That it is commonly vſed that he that byeth the land ſhall for his ſuertie, & for the auoiding of the taile in that behalfe, cauſe ſome of hys fryndes to recouer the ſayd lands againſt the ſaid tenant in tayle: whiche recouery as I haue been credably enformed ſhal be had in this maner, ỹ demaūdants ſhall ſuppoſe in their writ and declaracion ỹ the tenant hath no entre, but by ſuch a ſtrāger as the byer ſhall liſte to name and appoint, wher in dede the demaundauntes neuer had poſſeſſion therof nor yet the ſaid ſtraunger. And thereupon the ſaid tenant in taile ſhal appere in the court, & by aſſent of the parties, ſhal vouche to warrant, one that he knoweth well hathe nothing to yelde in value. And ỹ vouch ſhal appeare & the demaūdaunts ſhall declare againſt him, and thereupon he ſhall take a daye to enperle in the ſame terme and at that daye by aſſent & couen of the partics

hee shall make defaulte vpon whiche default be-
cause it is a defaulte in dispite of the courte, th
demaundauntes shal haue indgement to recouer
against the tenaunt in taile, and he ouer in valu
against the vouche and this iudgement and reco-
uerie in value, is taken for a barre of the taile fo
euer, how may it therfore be taken, that the law
standeth with conscience, that as it seemeth al-
loweth and fauoureth suche fained recoueries.

barre for ever.

S. If the tenaunte in taile sell the lande for
certaine summe of money as is agreede betwixt
them at such a price as is comonlye vsed of other
lands, & for the suertie of the sale suffreth suche a
recouerye as is aforesaid, what is the cause that
moueth thee to doubt whether the saide contract
or the recouerie made therupon: for the suertie of
the byer that hath truelye payed his money for ȳ
same shoulde stande with conscience.

D. Two thinges cause mee to doubt therein one
is for that, that after our Lorde had geeuen the
land of behest to Abraham & to his seede, ȳ is to
say to his childzen in possession alway to cōtinue,
He saide to Moyses as it appeareth Leuitti.xxv.
the land shal not be solde for euer, for it is mine.
And then our Lorde assigned a certaine manner
howe the lande might bee redeemed in the yeare
of Jubile if it were solde before: and for asmuche
as our Lorde would that the Land so geeuen to
Abraham and his childzen shoulde not bee solde
for euer, it seemeth that hee dooth against the en-
saumple of God that aliyeneth or selleth the lande
that is geuen to him and to his childzen as lāds
entailed be geuen.

taillo by God.

Another cause is thys: it appeareth by the commaundement of God that thou shalte not coueit the house of thy neighbour.&c.

And if the cōcupiscēce bee prohibited more strōger then ỹ vnlawful taking & withholding thereof is prohibite, and forasmuch as tayled lande when the aunceſter is deade, is a thinge that of right is belonginge to his heire, for that hee is heire accoʒding to the gifte, howe maye the lande with right oʒ conſcience bee holden from hym?

S. Notwythſtandinge the prohibition of almightye God: whereby the lande that was geeuen to Abraham and to hys ſeede might not bee alyened foʒ euer, yet landes wythin walled townes myght lawfullye bee aliened foʒ euer excepte the landes of the Leuites as it appereth in the ſayde Chapiter of Leuitici.xxv. And ſo it appeareth that the ſaid prohibition was not generall foʒ euerye place, and that amonge the Jewes. And it appeareth alſo that it was geuen onlye foʒ Abraham and his childʒen, and ſo it was not generall to all people. And yt appearethe alſo that it extended not but onelye to the lande of promiſſion as it appeareth by the woʒdʒ of the ſayde Chapiter, where it ys ſayde thus, all the region of your poſſeſſion ſhalbee ſolde vnder the condicion of redeming, wherby appereth that landes in other countries bee not bounde to that condicion, and as they bee not bounde to ỹ condicion: by the ſame reaſon it followeth that they be not bound to ỹ ſame ſucceſſion. Therefoʒe that ſaid lawe that will that the land geuen to Abrahā & to his ſeede ſhal not be ſold foʒ euer

walled townes except.

bindeth no lande out of the lande of promission,
passion. and some menne will saye that sithen the passion of our lorde was promulgate and knowen it bindeth not there. And to the seconde reason whiche is grounded vpon the commaundement of God, It must nedes be granted that it is not lawfull to any man vnlawfully to couet the house of hys neighbour and ẏ then more stronger he may not vnlawfully take it from him: but than it remayneth for thee yet to proue howe in this case thys tayled lande that is solde by hys auncestour and where of a recouery is had recorde in the kinges court may be saide the lands of ẏ heire. D. That may be proued by the law of the realme, that ys to say by the statute of Westminster the second ẏ first chapiter where it is said thus. The wyll of the geuer expressely cõtained in the deede of hys gift shalbee from hencefoorth obserued, so ẏ they to whom the tenementes bee so geeuen shall not haue power to alien, but that the landes after theire deathe shall remaine to the yssue or retourne to the donoure if the yssue fayle by the whiche statute it appeareth euydently ẏ thoughe they to whome the tenements were so geuen aliened them awaye, that yet neuertheless they in lawe and conscience by reason of the sayd statute ought to remaine to their heires according to the guyfte, for it is holden commonlye by all Doctoures that the commaundementes and
positiue rules of the lawe of manne or of a positiue lawe that is lawfullye made, bynde all that bee subiectes to that lawe accordinge to the mynde of the maker and that in the court of conscience.

bynd thẽ ẏ mark yt. D.

S. Dooſt thou thinke that if a manne offende againſt a ſtatute penall that hee offendeth in cõſcience admitte that hee doo it not of a wilfull diſobedience for that hee will not obey the lawe, for if hee doe it of diſobedience I thinke hee offendeth. D. if it bee but onelye a ſtatute that is called Populare it byndeth not in conſcience to the payment of the penaltie, till it bee recouered by the law. And than it doth bynde in conſcyẽce, but if a ſtatute bee made principallye to remedy the hurte of the partye, and for that hurte it geeueth a penaltie to the partye in that caſe the offẽdoure of the ſtatute is bounde immediatly to reſtore the dammages to the value of the hurte as it is vppon the ſtatute of Waſte, but the penaltie aboue the hurte, hee is not bounde to paye tyll iudgement bee geeuen, as it is ſayde before, but Statutes by the whyche it is aſſigned who ſhall haue righte or propertye to theſe landes and tenementes, or to theſe goodes or cattelles yf it bee not againſte the lawe of God, nor agaynſte the lawe of reaſon bynde all them that bee ſubiecte to the lawe: in lawe and conſcyence, and ſuche a ſtatute is the ſtatute of Weſtminſter the ſecond wherof we haue treated before, wherfore it muſt bee obſerued in conſcience.

S. But ſome holde that the ſtatute of Weſtminſter the ſeconde was made of a ſingularitie and preſumpcion of many that were at the ſaide parliamẽt for exalting and magnifying of theyre owne bloude and therfore they ſaye that that ſtatute made by ſuche a preſumpcion byndeth not in conſcience.

vide ſupra.

D. It is verye perilous to iudge for certaine that the saide statute was made of suche a pre=sumption as thou speakest of, for there be manye consideracions to proue that the saide statut was not made of suche a presumption but rather of a verye good mynde of al the parliament, or at the leaste of the more parte thereof, and for the common wealth of all the realme, and firste in the kyng the which in the saide parliament was the head and moste chiefe and principal parte of the parlyament as hee is in euerye parlyament, canne not be noted noe suche entente. For it is not necessarye nor it was not than in vse that la=des of the Crowne should bee entayled. and in spirituall menne ne yet in certaine burgesies and Citizens of the saide parliament whiche at that tyme hadde no lande there canne bee noted noe suche singularitie, nor yet in the noble menne and gentlemenne nor suche other as were of the saide parliamente and hadde landes and tene=mentes. It is not good to iudge in certaine that they did it of suche a presumption, but it is good and expedient in this case as it is in other cases that be in doubt to holde the surer way, & that is that it was made of charitie, to that entent that hee nor the heires of hym to whome the lande was geuen should not fall into extreme pouertie, and thereby happly to runne into offence against God, and thoughe it were true as they saye that it was not made of charitie but of presumption and singularitie as theye speake of. Neuerthe=lesse for as much as ỹ statute is not against the lawe of god nor against the lawe of reason it must bee

bee obſerued by al them that bee ſubiectes vnto ꝑ law. For as Jhon Gerſon ſaith in the treatiſe ꝑ hee entituleth in latine De vita ſpirituali anime: ꝑ foweth leſſon, & the third corolary: ſaieth that God will that makers of lawes iudge onely of outwarde thinges and reſerue ſecret thynges to him. And ſo it appeareth that manne may not iudge of the inward intent of the dede, but of ſuche thinges as be apparaunt, and certain it ys that it is not apparant that there was any ſuche corrupte intent in the makers of the ſaid ſtatute, how may it therefore bee ſaide that that lawe is good or rightwiſe, that not onely ſuffereth ſuche thinges againſt the ſtatute, but alſo againſte the commaundement of God. S. To that ſome aunſwer & ſay, that whan the lande is ſolde and a recouerie is had thereupon in the kinges court of recorde ꝑ it ſuffiſeth to barre the tayle in conſcience, for they ſay that as the tayle was firſte ordeined by the law ſo they ſay ꝑ by the law it ys adnulled againe. D. Se thou thy ſelfe iudge if in that caſe there be like autorite in the makyng of the taile as there is in the adnulling therof, for it was ordained by auctorite of parliamente, the which is alway taken for the moſt high court in this realme before any other & it is adnulled by a falſe ſuppoſei for that, that they that bee named demaundants ſhould haue right to the lād wher in trouthe they neuer hadde right therto, whereupon foloweth a falſe ſuppoſei in the writte, and a falſe ſuppoſei in the declaracion & a voucher to warrant by couine of ſuche a parſon as hath nothyng to yelde in value and thereupon by couine

and collusion of the parties folowyth the default of ỹ vouch, by the whiche default the iudgement shalbe geuen. And so al the iudgemēt is deriued and grounded of the vntrue supposell and couine of ỹ parties, wherby ỹ law of ỹ realme ỹ hath ordayned such a writ of entre to help them ỹ haue right to landes or tenementes is defrauded, the court is deceiued, the heire is disherited, and as it is to doubt ỹ bier and the seller and their heirs and assignes hauinge knowledge of the tayle bee bound to restitution, & verely I haue harde many times, ỹ after the law of ỹ realme such recoueries should be no barre to the heire in ỹ tayle, if the law of the realme might be therein indifferently harde. D. I cannot se but ỹ after ỹ lawe of the realme it is a barre of the taile, for whan ỹ tenaunt in taile hath vouched to warrantie, & ỹ vouche hath appeared and entred into the warrantie, & after hath made default in despite of the court, wherupō iudgement is geuen for ỹ demādant against the tenant, & for the tenant ỹ he shal recouer in value against the vouche, if ỹ heire in the taile shuld after bring his formedō & recouer ỹ lāds entailed, & after ỹ vouch purchaseth lāds, then should the heire also haue execuciō agaynste him to the value of the lādes entailed as heire to his ancester ỹ was tenaunt in the first accion, & so he should haue his owen lands, & also the lāds recouered in value: & therfore because of the presumpcion ỹ the vouche may purchase lāds after the iudgement, some be of opinion that it is in the lawe a good barre of the taile.

D. I suppose that in that case thou hast putte

that

that the vouche maye barre the heire in tayle of his recouery in value because thee hath recouered the first lands. Neuertheleſſe I will take a reſpite to be aduiſed of that recouery in value. And yf thou can yet ſhew me any other conſideracō why the ſaid recoueries ſhould ſtand with conſcience, I pray thee let me here thy cōceite therin, for the multitude of the ſaid recoueries is ſo great that it were great pitye that all ỹ ſhoulde be bound to reſtitucion that haue landes by ſuch recoueries, ſith there is none that as farre as I canne here, diſpoſeth them to reſtore. value.

S. Some men make an other reaſon to proue that the ſaide recoueries ſhould bee ſufficient by the law to auoide the ſtatute of weſt. than and if they be ſufficient thereto, they be ſufficient in cō-ſcience. D. What is theire reaſon therin S. In ỹ vii. yeare of king Henry the viii. the. iiii. chapiter among other thynges it is enacted, that all recouerers theire heires and aſſignes maye aduowe and iuſtifie for rentes, ſeruice, and cuſtomes by them recouered: as they againſt whome they recouered might haue doone. And then they ſaye that when the parliament gaue to ſuche recouerers aucthoritie to auowe and iuſtifie for ſuche rentes cuſtomes and ſeruices as they recouered, that the entent of the parliament was that ſuche recouerers ſhoulde haue right to that: for the whych they ſhould auowe or iuſtifie for els they ſaye that it ſhoulde bee in vayne to geeue them ſuch power, and that the parliament ſhould els be taken in maner as fortifiers of wrongful title and ſo they ſay ỹ ſuch recouerers by reaſon of the

ſaide

laide ſtatute haue right by the laᵂe. D. That ſtatute as it ſemeth ᵂas made onely̓e to geue to the recouerers a ſoꝛme to aduoᵂe and iuſtifye ᵂhiche they had not beſoꝛe though they had re= couered vpon a good title. And the cauſe ᵂhy̓e they hadde no ſoꝛme to aduoᵂe oꝛ iuſtifie beſoꝛe the layd ſtatute ᵂas, ſoꝛ as muche as the reco= uerers did not by the pꝛetence of theire acciō af= firme the poſſeſſion of him oꝛ them againſt ᵂhō they recouered, noꝛ claymed not by them, but rather diſafirmed and deſtroied their eſtate. And therefoꝛe they cannot alledge anye continuaunce of their title by thē, as they may that haue rents oꝛ ſeruices, oꝛ ſuch other of the graunte of other by dede oꝛ by fine. And therefoꝛe as it ſemeth the moſt pꝛincipal intent of the ſtatut was that ſuch recouerers ſhould aduoᵂe and iuſtifie ſoꝛ rentes ſeruices and cuſtomes as they ſhould oꝛ myght do that had them by fine oꝛ dede not hauing anye reſpect as it ſeemeth ᵂhether they recouered a= gainſt tenant in fee ſimple oꝛ in fee taile, noꝛ ᵂhe ther the recoueries ᵂere had vpō a rightful ty= tle. And therfoꝛe as me ſeemeth the ſaide ſtatute neither affirmeth noꝛ diſafirmeth the title of the recoueries ᵂherby they do aᵘoᵂ foꝛ if a mā had right beſoꝛe ẏ recouerie the right ſhould remain vnto him notᵂſtanding the ſayde ſtatute & ſo me ſemeth that the title of them that haue the lands entayled by ſuche recoueries is nothyng foꝛtified noꝛ affirmed by the ſaide ſtatute butte that they are in the ſame caſe as they ᵂere beſoꝛe: ᵂhat thinkeſt thou therein: S. This matter is great, foꝛ as thou ſaiſt ther be ſo many that haue tailed

lands

landes by ſuche recoueries: that were greate pitie and heauines to condemne ſo manye perſones and to iudge that they all were bounde to reſtytucion. For I think there be but fewe ī this realme ẏ haue lands of any notable value but that they or their auncestours, or ſome other by whō they claime haue had parte thereof by ſuche recoueries. In ſo muche that Lordes ſpirituall and temporall, Knyghtes, Squyres, rich menne and poore, Monasteries, Colleges, and Hoſpitalles haue ſuche landes, for ſuche recouerys haue beene vſed of longe tyme, who may thynke therefore without greate heauineſſe that ſo manye menne ſhoulde bee bounde to reſtitucion, & ẏ yet as thou ſayeſt, no manne diſpoſeth him to make reſtitucion. And ſo I am in a maner perplexed and wote not what to ſaye in thys caſe but that yet I truſt that ignorance may excuſe manye perſonnes in this behalfe.

D. Ignorance of the deade maye excuſe, but ignorance of the lawe excuſeth not but it be invincible, that is to ſaye that they haue done that in them is to knowe the trueth, as to counſayle with lerned men: & to aſke them what the lawe is in that behalfe & if they aunſwere them ẏ they may do this or that lawfully, then they be therby excuſed in conſcience, but yet in mans lawe they be not thereby diſcharged but they ẏ haue taken vpon thē to haue knowlege of the lawe be not excuſed by ignorance of the lawe, ne no more are they ẏ haue a wilfull ignorance and ẏ would rather bee ignorant then to knowe the trouthe. And therefore they wyll not dyſpoſe them to

ignorans

aſke

aſke any counſaile in it, & if it bee of a thing that is againſt the laſwe of god or the laſwe of reaſon, no man ſhalbe excuſed by ignorraunce, and ſo ther bee but feſwe that be excuſed by ignorraunce. S. What then ſhal we condemne ſo many & ſo notable men. D. We ſhal not condemne them but wee ſhal ſhew them their peril. S. Yet I truſt that their daunger is not ſo great that they ſhould be bound to reſtitution. For John Gerſon ſayth in the ſaide booke called De vnitate eccleſiaſtica cōſideratione ſecunda, quod communis error facit ius: That is to ſay, a common errour maketh a right, of which woordes as it ſemeth ſome truſt may bee had, that though it were fully admitted the ſaid recoueries were firſt hadde vppon an vnlaſwfull grounde and againſte the good order of conſcience that yet neuertheleſſe foraſmuche as they haue beene vſed of longe time ſo that they haue ben taken of diuers menne that haue beene right well learned in maner as for a laſwe, that the byers partely bee excuſed ſo that they bee not bounde to reſtitucion. And moreouer it is certaine that that ſtatute of weſt. the ſecounde nor none other ſtatute made by manne cannot bee of greater vertue or ſtrengthe, then was the bonde of matrimony that was ordeined by God. And though that bonde of matrimony was indiſſoluble: yet neuertheleſſe Moyſes ſuffred a bill of refuſel of the Jewes, which in latin is called Libellum repudii, and ſo they might thereby forſake their wiues. As it appeareth Deutro. xxiii. and therfore like as a diſpenſacion was ſuffred againſt that bond, ſo it ſeemeth it may be againſt this

this statute. D. As to that reason that thou hast last made of a byll of refusel, let all pourchasours of land here what our lord saith in the gospel to the Jewes of that bill of refusell. Mathey xix. where he saieth thus, to the hardnes of your hartes. Moyses suffred you to leaue youre wiues, for at ỹ beginning it was not so, of which wordes Doctours hold commonly that thoughe suche a bill of refusell was lawefull so that they that refused their wiues therby, should be without paine in the lawe, that yet it was neuer lawfull so that it should be without sinne. And so lykewise it maye be saide in this case that suche recoueries be suffered for the hardnes of ỹ hartes of Englisth mẽ, which desire lãd & possessiõs with so great greedines that they cannot bee wdrawen from it neyther by the lawe of God nor of the realme. And therfore the riche men should not take the possessions of poore mẽ frõ thẽ by power wout colour of tytle, that is to saye either by open disseison, or by the onely sale of ỹ tenant in taile, and so to hold them againste the expresse wordes of the statut, such recoueries haue ben suffered. And thoughe for theire great multitude they may happely be without paine as to ỹ law of the realme: yet it is to feare that theye be not without offence as againste God, and as to thy other reason that a common errour should make a right, those wordes as me seemeth be to be thus vnderstãd, that a custome vsed agaynste ỹ law of man shal be taken in some cõtries for law if the people be suffered so to continue. And yet some menne call suche a custome an errour

refusell.

because

becaule that the continuaunce of that cuſtome a-
gainſte ỹ laſwe was parteiy an errour in ỹ peo-
ple foꝛ that that they ſwoulde not obay to ỹ laſwe
that was made by theire ſuperioures to the con-
trarye of that cuſtome: but it is to be vnderſtand
that the ſaide recoueries though they haue beene
longe vſed may not be taken to haue ỹ ſtrengthe
of a cuſtome, foꝛ manye as ſwell learned as vn-
learned haue alſway ſpoken agaynſte them & yet
dooe. And furthermoꝛe as I haue harde ſaye a
cuſtome oꝛ a preſcription in this realme agaynſt
the ſtatutes of the realm preuaile not in the laſw.

S. Though a cuſtome in this realme preuaileth
not againſt a ſtatute as to the laſwe, yet it ſemeth
ỹ it may preuaile againſt the ſtatute in cõſcience,
foꝛ thoughe ignoꝛaunce of a ſtatute excuſeth not
in the laſw, neuertheleſſe it may excuſe in conſcy-
ence & ſo it ſeemeth that it may dooe of a cuſtome.

D. But if ſuche recoueries cannot bee bꝛought
intoo a laſwfull cuſtome in the laſwe, it ſeemeth
they maye not bee bꝛought into a cuſtome in con-
ſcience, foꝛ conſcience muſt alſwaye bee grounded
vppon ſome laſwe: and in this caſe it cannot bee
grounded vppon the laſwe of reaſon, noꝛ vppon
the laſwe of God: And thereſoꝛe if the laſwe of
manne ſerue not, there is no grounde ſwhereup-
pon conſcience in this caſe maye bee grounded, &
at the beginninge of ſuche recoueries they ſwere
taken to bee good becauſe the laſwe ſhould war-
rante them to bee good and not by reaſõ of anye
cuſtome, and ſo if the reaſon of the laſwe ſwyll
not ſerue in the recoueries, the cuſtome canne
not helpe foꝛ an euyll cuſtome is to bee putt a-
waye,

waye. And therefore mee seemeth that the recoueries bee not without offence agaynste God, though happely for theire greate multitude, and that there shoulde not bee as it were a subuersion of the inheritaunce of manye in this realme as well of spirituall as temporall: they be without payne in the lawe of the realme: except suche recoueries as by the common course of the lawe bee voidable in the lawe by reason of some vse or of some other speciall matter, but what payne that is I will not temerously iudge, but committe it to the goodnesse of our Lorde whose iugementes bee verye deepe and profounde, nor I wyll not fullye affirme that they that haue landes by suche recoueries ought to bee compelled to restitution, but this seemeth to mee to be good counsayle that euerye manne hereafter hold that is certaine and leaue that is vncertaine, & that is that he kee[illegible]him selfe from suche recouerpes, and then hee shalbee free from all scrupulousnes of conscience in that behalfe.

S. It seemeth that in this question thou ponderest greatlye the sayde statute of Westminster. the seconde and that thoughe it bee but onelye a lawe made by manne, that yet for as muche as it is not agaynste the lawe of reason, nor the lawe of Godde, thou thynkest that yt must bee holden in conscyence, and ouer that as it seemethe thou arte somewhat in doubte whether those recoueries bee anye barre to the heire in the taile by the lawe of the realme vnlesse that he haue in value in deede vppon the voucher, and that thou

wilt

wilt thereupon take a respite or thou shewe thy full mynd therein, and in likewyse thou thinkest as I take it that those recoueries canne not bee brought into a custome but that the longer that they be suffered to continue if they bee not good by the law the greater is the offence against god. And therefore thou pondrest litle that custome, but yet thou agreest that it is good to spare the multitude of them that be past: least a subuersion of ỹ inheritance of manye of this realme myghte folow and great strief and variance also: if theye should be adnulled for the time past: except there be any other special cause to auoyde them by the lawe as thou hast touched in the laste reason but thou thinkest that it were good that from hence forth suche recoueries should be clerely prohibyt and not be suffered to be had in vse as they haue beene before: and thou counsailest all menne therefore to refraine them selfe from suche recoueries hereafter. D. Thou takest well that I haue said and according as I haue ment it. S. Now I pray thee sith I haue hard thy questiō of these recoueries according to thy desire ỹ thou wouldest aunswer me to some particuler questions cōcerning tailed landes, wherof thou haste at thys time geuen vs occasion to speke. D. Shew me those questions & I wil shew my minde therein with good will.

¶ The firste question of the Student concernynge tailed landes.

¶ The.xvij.Chapter.

IF a disseisour make a gift in the taile to Jhon at Stile and Jhon at Stile for the redemyng of the title of the disseisye agreethe with him that he shal haue a certain rent out of the same land to him & to his heires, & for the suertie of that rente it is deuised that ỹ disseisie shal release his right in the land &c. and that suche a recouerie as wee haue spoken of before shal be had against ỹ sayde Jhon at stile to the vse of the paymente of the said rent and of the former taile whether standeth that recouery wel with conscience or not as thou thinkest D. I suppose it doth for it is made for the strengthe and suertye of the tayle which the disseisie might haue clerely defeated & auoyded if he wouldc & therefore as I thynke if the said Jhon at stile hadde graunted to the disseisy onely by his dede a certayne rente for the releasynge of his title that graunte shoulde haue bounde the heires in the taile for euer. And then if the disseisy for his more suertie wyll haue such a recouery as before appeareth it semeth that recouery standeth wt good conscience.

S. It semeth that thye opinion is right good in this matter. And so it appeareth that suche a reasonable cause some particuler recouerys may stand both with lawe and conscience to barre a tayle.

¶ The seconde question of the student concerning tayled landes.

The.xxviij. Chapter.

If a tenaunt in taile suffer a recouerye against hym of the lands entailed to the entēt that ꝧ recouerie shal stand seysed thereof to the vse of a certain womā who he entendeth to take to hys wife, for terme of her lyfe, & after to the vse of ꝧ first taile & after he marieth ꝧ same womā, whether standeth that recouery wt conscience though other recoueries vpon bargaines and sales dyd not?

woman.

worthis yard.

Whi. It seemeth yes, for though the statute bee that they to whom the tenements bee so geeuen, should not haue power to aliene, but ꝧ the lādes after their death should remain to their issues or retourn to the donours if the issues failed: yet if he to whom the lands were so geuen take a wife & dieth seysed without heire of his body, & the donour entre the woman shal recouer against hym the third part to holde in the name of her dowrie for terme of her life, though the taile be determined & the same law is of tenant by the curtesye: ꝧ is to say of him that happeneth to mary one ꝧ is an inheritrix of the land entailed, & they haue issue the wife dyeth and the issue dieth, her shall holde the landes for terme of his lyfe as tenaunt by the curtesye, notwythstandynge the wordes of the statute, whiche saye that after the deathe of the tenaunt in taile without issue the landes shal reuert to the donour, and I thynk the cause is because the intent of that statute shall not bee taken ꝧ it entended to put awaye suche titles as the lawe should geue by reason of the taile, and so it seemeth that a lyke entente of the statute shall be taken for iointours, for elles the statute

donors

mariage

myghte

myght be sometime a lettinge of matrimony, and it is not like that the statut intended so, & therfore it semeth that by the onely dede of the tenaunt in taile a iointour may be made by the intente of the statut, though the wordes of the statute serue not expresly for it, for many times the intent of ye letter shalbe taken & not the bare letter, as it appeareth in the same statut where it is sayd that he to whom the lands be geuen shal haue no power to alien, yet the same statut is cõstrued that neither he nor his heirs of his body shal haue no power to alene, & so me thinketh that such an intent shalbe taken here for sauing of iointours. ¶ Trouth it is that sometime the intent of a statut shalbe taken farther than the expresse letter stretcheth, but yet ther may no intent be takē against the expresse wordes of the statut, for that should be rather an interpretacion of the statut than an exposicion and it cannot be reasonably taken, but that the intent of the makers of the saide statute was that the lande shoulde remaine continually in the heirs of the taile as long as the taile endureth and there can no ioinior bee made neither by dede nor by recouery, but that the taile must therby bee discontinued, and therefore this case of iointour is not lyke to the said cases of tenant in dower or tenant by the curtesye, for the title of dowrie and of tenauncie by the curtesye groweth moste specyallye bye the contynuaunce of the possession in the heires of the taile but it is not so of ioyntoures, and therefore by the onelye dede of the tenaunt in the taile there maye no iointor be lawefully made against the expresse woordes

of the statute. And yf there be any made by waye of recouerie, then it seemeth that it must bee put vnder the same rule as other recoueries must be of landes entailed.

¶ The third question of the student concerning tailed lande

The.xxix.Chapter.

IF Jhon at Noke being seised of lands in fee, of his mere motion make a feoffement of certain lands to the intent that the feffes shal therof make a gift to the said Jhon at Noke to haue to him and too his heires of his bodye, and theye make the gift accoꝛding. And after the saide Johan at Noke falleth into det, wherfoꝛe he is taki and put in pꝛison, and thereupon foꝛ payment of his dettes he selleth the same lande & foꝛ suertye of the bier he suffreth a recouery to be had againſt him in such maner as befoꝛe appeareth, whether standeth that recouery with conscience oꝛ not?

D. I would here make a lytle digression to aske thee another questiō oꝛ that I make aūswere to thine: that is to say: to seele thy mynd howe that law by the which the body of the dettour shalbe taken and cast into pꝛison there to remain till he haue paide the dette may stande with conscience, specially if he haue nothing to paye it with, foꝛ as it seemeth if hee will relinquishe his goodes, whiche in some lawes is called in Latin Cedere bonis that he shal not be imꝑisoned, and that is to be vnderstād most specially yf he be fallen into

pouertye

pouertye and not throughe his owne default. S. There is no lawe in this realme that the defendaunt may in any case Cedere bonis, and as me seemeth if there were such a lawe it should not be indifferent, for as to the knowledge of hym that the money is owing to ỹ dettoure might Cedere bonis, ỹ is to say relinquish his goodes, and yet retaine to himselfe secreatiye greate riches. And therfore ỹ lawe in such case seemeth more indifferent and rightuouse ỹ comitteth suche a dettour to the conscience of the pleyntife to whome the money is owinge then ỹ committeth him to the conscience of him that is the dettoure, for in the dettour some defaulte maye bee assigned, but in him to whom the money is owing maye bee assigned no default. D. But if hee to whome the det is owing, knoweth that the dettour hath nothing to paye the dett with and ỹ hee is fallen in to the pouertie by some casualtie, and not throwe his own default doth the lawe of England hold that hee may with good conscience kepe the dettour still in prison till hee bee payde? S. Naye verely: but it thinketh more reasonable to appoint ỹ libertie & the iudgement of conscience in ỹ case to the dette then to ỹ dettour, for ỹ cause before rehersed. And than the dette if he know the trouth is as thou hast saide bound in conscyence to let him go at libertie thoughe hee bee not compellable thereto by the lawe. And therefore admitting it for this time, that the lawe of Englande in this pointe is good and iuste, I praye thee ỹ thou wilt make answere to my question.

D. I will with good will, & therfore as me se-
meth for asmuch as it appeareth ỹ the said gift
was made of the mere libertie & free will of the
said Jhon at Noke, & wout any recompēce that
therefore it cannot be otherwise takē but that ỹ
intent of the said Jhon at noke as wel at ỹ time
of the said feoffement, as at the time ỹ he recey-
ued again the said gift in the taile was that if he
happened afterwards to fal into pouertie, ỹ hee
might aliene the said land to relieue him &, for
how may it be thought that a man will so muche
ponder the wealth of his heire that he will for-
get himself, & so it semeth that not only ỹ said re-
couery stādeth with conscience, but also if he had
made onely a feoffement of the land, ỹ feoffement
should be in conscience a good barre of the tayle,
but if the said feoffement and gift had been made
in consideracion of any recōpence of money or for
any matrimony or such other, than the feoffemēt
of ỹ sayd Jhon at noke should not bind his heire
& if he than suffred any recouery therof, then the
recouery should be of like effect as other recoue-
ries whereof wee haue treated before, and that
which I saide it was good to fauour rather for
theire multitude then for the conscience and the
same lawe is that if the sonne and the heire of ỹ
sayde Jhon at noke in case that the sayde gyfte
was made without recompence aliene the lande
for pouertie after the deathe of hys father the
recouerye bindeth not but as other recoueries
dooe, for it cannot bee thoughte that the intent of
the father was that anye of hys heires in tai-
le shoulde for anye necessitie disherite all other

heirs

heires in taile ꝑ shoulde come after hym, but for himselfe me thinketh it is reasonable to iudge in such maner as I haue said before.

S. And though the intent of the sayde Jhon at noke when hee made the saide feoffement, and whan he toke againe the saide gifte in taile: were that if he fell in neede that he might alien yet I suppose ꝑ he maye not alien thoughe percase for the more suertie he declared his intent to be such vpon the liueries of seasone: for that intente was contrary to the gyfte ꝑ he freely toke vpon hym: and whan any intent or condicion is declared or reserued against the state ꝑ anye man maketh or accepteth: thā such an intent or cōdicion is void by the law as by a case that hereafter followethe will appeare, ꝑ is to saye if a man make a feoffement in fee vpon condicion that the feoffe shall not alien it to anye man, that condicion is voyde for it is incident to euerye state of the fee simple that hee that is so seysed may alien. And lyke as in a fee simple there is incident a power to alyē, so in a state tayle there is a secrete intent vnderstand in the gift, that no alienacion shalbe made. And therefore though the entent of the said Jhō at noke were that if he fel into pouertie that hee might sel: and thoughe he at the takynge of the gift openlye declared hys intent so ber so: yet the intent should bee voyd by the law as me semeth, and if it bee voide by the law yet is also voyde in conscience, and so the saide recouerie must be taken in this case to be of the same effecte as recoueries of other landes intailed be ꝑ in none other maner.

¶ The fowerth question of the student concerning recoueries of inheritance entayled.

The .xxx. Chapter.

annuitie. If an annuitie be graunted to a man to haue & to perceiue to the graunte and too the heires of hys bodye of the cofers of hys grauntoure. And cofers after the graūt suffreth a recouerye against him in a writ of entre by the name of a rente in dale of lyke summe as the annuitie is of, with vouchers and iudgement after the common course, & both parties intende that ỹ annuitie shall bee recouered: whether shall ỹ recouery bind the heire in the tatle of his annuitie.

D. What if it were a rent goyng out of lande: what effect shouid the recouere be than: S. It shouide bee then of lyke effecte as if it were of lande. D. And so it semeth to bee of thys annuitie, for as me thinketh a rente and annuite be of one effect, for the one of them shalbe payde in ready money as the other shall. S. That is trouth and yet there bee many great diuersityes betwixt them in the law D. I pray thee shewe me some of those diuersities. S. Parte I shall shewe thee, but I wote not whether I can shewe thee al, but first thou shalt vnderstande that one diuersitie is this. Euerye rente bee it rente seruice, rent charge, rent seke, is goynge oute of land, but an annuitie goeth not out of any lande but chargeth onely the person, that is to saye the grauntour or his heirez that haue assez by diseēt,

or

or the house if it bee graunted by a house of relygion to perceiue of their cofers. Also of an annuitie there lyeth no accion but only a writte of annuitie againste the grauntour his heires or successours, & that writte of annuitie lyeth neuer against the pernour but onely against the grauntour or his heires, but of a rent the same actions may lye as do of lande as the case requireth, & it lyeth sometime of rent against the tenant of the ground, and sometime against the pernour of the rent, ỹ is to saie againste him that taketh ỹ rent wrongfully, and sometime against neither: as of a rent seruice assise maye lye for ỹ iorde agaynste the mesne & the disseisour or sometime against ỹ mesne onely if hee did also ỹ disseisō. Also an annuitie is neuer taken for an assets be cause yt is no freholde in ỹ law, ne it shal not bee put in execucion vpon a statute marchaunt, statute staple ne elegit as a rent maye: And because the sayde writte of entre lay not in this case of this annuytie. And that it cannot bee entended in the lawe to be the same annuitie, though it be of like fourme with ỹ annuitie, ne though the parties assented & ment to haue the same annuitie recouered by the said writte of entre, therfore the said recouerie is voide in lawe & cōscience, but if such a recouerie be had of rent & a voucher ouer, thtu it shalbee taken to be of like effect as recouerie of landes be in such maner as we haue treated of before.

Cofers.

2 grauntour

3 grauntour.

3 assets.

¶ The fifth question of the student concerning tailed landes.

The

The .xxxi. Chapter.

IF landes be geeuen to a man and to hys wyfe in the name of her iountour by the father of the husbande to haue and to holde to them & to the heires of theire two bodies begotten, and after they haue issue & the husband dieth and the wife aileneth ẏ land & against the statut of .xi. H. vij. suffreth a recouery thereof to be had againste her to the vse of the vier, and after her sonne & heire apparaunt that is heire to the tayle releaseth too the recoueres by fine & dyeth hauinge a brother on liue, & after the mother dieth, who hath ryght to the land, the vier or the brother of him ẏ releaseth? D. What is thine opinion therein, I prays thee shew me? S. Me seemeth that the vyer hath ryght, for by the saide statut made in the .xi. yere of kyng Henry the .vij. amonge other thyngs it is enacted that if any womā which hath lāds of the gift of her husbande or of the gift of anye of the auncestours of the husbande suffer any recouery thereof against her by couin, that thā suche recouery shal be voide & that it shalbe lawful to him that should haue the land after the death of the woman to enter and it to hold as in hys ūrst right, prouided alwaye ẏ that statut shal not extend where hee that shoulde haue the lande after the death of the womā is agreable to any such alienacion or recouery, so that that agreemēt be of record. And for as much as ẏ heire in this case agreed to ẏ said recouery by fine, which is one of the highest recordes in the law it seemeth that ẏ vyer hath ryghte againste that heire that agreed

and

& against all that shalbe heire of the taile, & that not only by the said recouery, but also by the said statut whereby the said recouery & assent of the heire is affirmed.

D. Though the byer in this case haue right during the life of the heire that released, yet neuertheles after his death his heire as it semeth may lawfully enter, for the agremēt wherof ỳ statut speaketh must as I suppose either be had before the recouery, or els at the time of the recouerye, for if a title by reason of the said statut be once deuolute to the heire in the taile, than the right as it semeth cānot be extinct nor put away by ỳ only fine of the heire, no more than if he had died & the next heire to him had released to the byer by fine, in which case the release could not extincte the ryght of the taile, nor the righte of entre that is geuen by the statut, and so as me seemeth hys next heire may therefore enter.

S. As I perceiue all thy doubt is in this cale because the assent of the heire was after the recouery, for if it had ben at the time of the recouery. as if the heire had been vouched to warrante in the same recouery and hee had entred: and thereupon the iudgement had ben geeuen thou agreest wel, that recouery should haue auoided the taile for euer.

D Doctoure, That is true for it is in expresse woordes of the statute, but whan the assente is after the recouery, than me thinketh it is not so, ne that the righte of the firste tayle, whyche was reuyued by the sayde statute shall not bee extincte by hys fine, no more than it shall in

other

other tayle. S. I will bee aduised vppon thy oppinion in this matter, but yet one thing would I moue farther vpon this statute & that is thys. Some say that by this statute all other recoueries that haue beene had ouer beside these recoueries of ioitours be affirmed, for they say ꝑ sith ꝑ Parliamēt at ꝑ making of this statute knewe wel that manye other recoueries were then vsed and had to defeat tailes, and ꝑ it was like ꝑ they would so continue, which neuertheles the Parliamēt did not prohibite for the time to come as it did the saide recouerie of iointours, that yt is therefore to suppose that they thought that they should stande with lawe and conscience: but because ioyntours were made rather for the sauing of the inheritaunce of the husband, than to dystroy ꝑ inheritaunce, they saye ꝑ the Parliament thought and adiudged the alienations and recoueries of such iointours to be against the law & conscience, & not the alienations of other landes entayled, for if they had they say, ꝑ the Parliament would haue auoyded recoueries of tayled landes generallye as well as it did of recouerys of ioyntours. D. As to that oppinion I wyll answer thee thus for this tyme, ꝑ though that the makers of the saide estatut onely put awaye recoueries of iointoures, and not other recoueries ꝑ yet it cannot be taken therfore ꝑ their intent was that the other recoueries should stand good & perfect, for they spake than onely of ioyntoures because there was no complaint made in the Parliament at ꝑ time, but againste recoueries had of iointours, & therefore it seemeth that they

ꝑ statuto law and act, only ꝑ it names

they intended nothing concerning other recoue=
ries, but that they should be of the same effect as
they were before & no otherwise. And that wyll
appeare more plainely thys, though the makers
of the said estatut intended to put away and ad=
nul such recoueries as shoulde bee made of ioyn=
tours after a certaine daie limitted in the statut,
that yet they intended not to auoyde ne affyrme
such recoueries of iointours as were passed be=
fore that time: & if they intended not to auoyde
ne affirme ỹ recoueries had of iointoures before
that time, than how can it be taken that they in=
tended to put awaye or affirme other recoueries
that were passed before that time & not of ioyn=
tours, ỹ would not affirme ne put awaye recoue
ries passed of iointours before that time. And so
as it semeth they intended to spare the multitude
of them that were passed of both, and not to com
fort any to take them after that time. S. I am
content thy opinion stand for this tyme & I wyll
aske the another question.

¶ The .xxxij. question of the stu= dent concernynge tay= led landes.

The .xxxij. Chapter

If tenaunt in tayle bee dysseysed, and dye & an
auncester collateral too the heire in taile release
with a warrauntye and dye, and the warrantye
descendeth vpō ỹ heire in the taile, whether is he
there

thereby barred in conſcience, as he is in the lawe,
D. Becauſe your principall intent at this time is to ſpeake of recoueries & not of warraunties, & alſo becauſe it hath beene of long time take for a principall maxime of the lawe that it ſhould be a barre to the heirs as well ỹ claimeth by a fee ſimple as by ſtate taile, & for that alſo that it was not put away by the ſaid ſtatut of weſtm the ſecond which ordeined the taile, I wil not at thys time make thee an anſwer therin, but wil take a reſpite to be aduiſed.

S. Thē I pray thee yet or we depart ſhew mee what was the moſt principall cauſe that mooued thee to mone this queſtion of recoueries had of tailed lands. D. This moued me therto, I haue perceiued many times that therebe many diuers opinions of thoſe recoueries, whether they ſtand with conſcience or not. & that it is to doubte that many perſons ren into offence of cōſcience thereby. And therfore I thought to fele thy mynde in them whether I could perceiue ỹ it were clere, ỹ they ſerued to breake the taile in lawe and conſcience, or that it were clerely againſte conſcience ſo to breake the taile, or that it were a matter in doubte, & if it appered a matter in doubt, or that it appeared that the matter were vſed clerely againſt conſcience, than I thoughte to doe ſomewhat to make the matter appere as it is too the intent: that they that haue the rule & ỹ charge ouer the people as well the ſpirituall menne as temporal men, ſhould the rather endeuour them too ſee it reformed for the common wealthe of the people, as well in bodye as in ſoule. For

whan

whan any thing is vsed to the displeasure of god, it hurteth not onely the bodye but also the soule. And temporal rulers haue not onely cure of the bodies, but also of the soules, & shall aunswer for them if they perishe in their default: & because it seemeth by the more apparant reason that the tailes be not broken ne fully auoided by the said recoueries, & that yet neuertheles the great multitude of them that be passed is right much to bee pondered. Therefore it were very good to prohibite them for time to come, to put away such ābiguities & doubts as rise now by occasion of ỹ said recoueries, & so they be put as snares to deceyue the people, and so wyll they be as long as they be suffered to continue. And mee thinketh verely ỹ it were therefore right expedient that tailed lāds should from henceforth eyther be made so strong in the lawe that the taile shoulde not bee broken by recouerye, fine wyth proclamation, collateraill warrauntye, nor otherwise, or els that all tailes shoulde be made fee simple, so that euery man ỹ list to sell his land might sell it by hys bare feoffement and without anye scruple or grudge of conscience: and than there should not be so greate expences in the lawe nor so great variance amonge the people: ne yet so great offence of conscience as there is now in many parsons. ❡ Verely mee thinketh that thy opinion is right good and charitable in this behalfe. And ỹ the rulers be bound in conscience to loke wel vpon it to se it reformed & brought into good order. And verely by that thou hast said therin thou hast broughte mee into remembraunce that there bee diuers like snares

concernyng

concerning ſpiritual matters ſuffred among the
peple wherby I dout that many ſpiritual rulers
be in gret offece againſt God. As it is of the poit
ꝧ the ſpiritual men haue ſpoken ſo muche of, the
prieſtes ſhould not be put to aunſwer before lay
men ſpecially of felonies & murders, & of the ſta
tut of. xiij. E. iij. ꝧ. iij. chapter. Wher it is ſaide ꝧ
ꝑ prohibiciō ſhal lie wher a mā is ſued in the ſpi=
ritual court for tithe of wood, ꝧ is aboue the age
of. xx. yere, by the name of Siluacedua as it hath
done before, & they haue in opē Sermōs & in di=
uers other opē comunicaciōs & coūſailes cauſed
yt to be opēly notified & knowē ꝧ they ſhould be
al accurſed ꝧ put prieſts to aunſwer, or ꝧ main=
taine the ſaid eſtatut or any other like to it. And
after when they haue right wel perceiued ꝧ not
withſtanding al that they haue done therein, yt
hath ben vſed in the ſame pointes through al the
realme in like maner as it was before. Thē they
haue ſet ſtil & let the matter paſſe, & ſo whē they
haue brought e many perſons in great daunger,
but moſt ſpeciallie thē ꝧ haue geuen credence to
their ſayyng, & yet by reaſon of the old cuſtom ha
ue done as they did before, than ther they left thē
but verely it is to feare that ther is to them ſelf
ryghte great offence thereby, that is for to ſaye
to ſee ſo manye in ſo greate daunger as they ſay
theye bee. And to dooe noe more to bryng
them oute of it thanne they haue done for if it be
true as theye ſaye, they ought to ſticke to yt
with effecte in all charitie til it weare reformed.
And if it be not as they ſaye then they haue cau=
ſed manye too offende that haue geeuen credence

to

to them and yet contrary to their own conscience do as they did before, and that percase should not haue offended if suche sayings had not ben. And so it semeth that they haue in these matters done either to muche or to litle.

And I beseche almightie God that some good man maye so call vpon all these matters that we haue now commoned of, so that they that bee in auctoritie may somewhat ponder them, & to order them in such maner that offence of conscience growe not so lightly thereby hereafter as it hath done in times paste. And verely he that on the crosse knewe the price of mannes soule wil hereafter aske a right straight accompt of rulers for euery soule that is vnder them and that shall perishe through their default.

¶ Addicion.

THus haue I shewed vnto thee in thys lyttle Dialogue how the lawe of England is grou̅ded vpon the lawe of Reason, the lawe of God, the generall customes of the realme, and vppon certaine principles that be called maximes, vpon the particuler customes vsed in diuers Cytyes and countreis, & vpon statutes which haue beene made in diuers parliamentes by our soueraigne Lorde the kynge & his progenitours, and by the lordes spirituall and temporall and all the commons of ỹ realme. And I haue also shewed thee in the.ix. Chap. of this booke vnder what maner the saide general customes and maximes of the lawe maye be proued and affirmed if they were

denied, and diuers other thinges be conteined in this present Dialogue, which will appere in the table, that is in the latter ende of the booke as to the readers will appere. And in the ende of the saide dialogue, I haue at thy desire shewed thee my conceit concerning recoueries of tailed lands and thou hast vppon the saide recoueries shewed mee thyne oppinion. And I beseche our lorde set them shortly in a good cleare waye, for surely yt will bee right expedient for the well orderinge of conscience in many parsons that they be so.

And thus the God of peace and loue
be alwaye wyth vs.
Amen.

HEre endeth the firſt Dialogue in Engliſhe, with new Addicions betwixte a Doctour of Diuinitie, and a Student in the lawes of Englande. And hereafter folowyth the ſeconde.

In the beginning of whych Dyalogue the Doctour aunſwereth to certayne queſtyons, whyche the Student made to the Doctour before ỹ making of this Dialogue concerninge the lawes of England and conſcience, as appeareth in al Dialogue made betwene them in Latine the. xxiiii. Chapter. And hee aunſwereth alſo to dyuers other queſtions that the ſtudent maketh to him in this Dialogue of the lawe of Englande and cõſcience. And in diuers other Chapiters of thys preſent Dialogue is touched ſhortlye howe the lawes of Englande are to be obſerued & kepte in this Realme as to tempozall thinges aſwell in lawe as in conſcience before anye other lawes. And in ſome of the Chapiters therof is alſo touched that ſpirituall Judges in dyuers caſes be bounde to geue their iudgementes accordyng to the kinges lawe. And in the latter ende of the booke the doctour moueth dyuers caſes concernyng the lawes of England, wherin he doubteth howe they maye ſtande with Conſcience, wherunto the Student maketh anſwer in ſuche maner as to the reader will appeare.

IN the latter end of our first Dialogue in latine, I put diuers cases grounded vpon ỳ lawes of England wherin I doubted & yet do what is to be holde therin in conscience. But for as muche as the time was then farre past, I shewed thee that I would not desire thee to make aunswere to them forthwith at that time but at some better leiser: wherunto thou saydest thou wouldest not only shew thine opinion in the cases, but also in suche other cases as I would put. Wherfore I praye thee now (for as much as mee thinketh thou hast good leiser) ỳ thou wilt shew me thine oppinion therin. D. I will & good will accõplish thy desire: but I would ỳ when I am in doubt what ỳ lawe of this realme is in suche cases as thou shalt put, ỳ thou wilt shew mee what the lawe is therin: for though I haue by occasion of our first dialogue in latin learned many things of ỳ lawes of this realme which I knew not before: yet neuerthelesse there be many mo things ỳ I am yet ignorant in, & ỳ peraduenture in these selfe cases that thou hast put, and entendest hereafter to put and as I sayde in the first Dialogue in latin the xx. Cap. to search cõscience vpon anye case of the lawe it is in vayne, but where the lawe in the same case is parfitly knowen. S. I wyll with good will do as thou saiest, & I entend to put diuers of the same questions that be in the last cha. of the said dialogue in latin, & sometime I entẽd to alter some of them, and adde some newe questions to them, as I shalbee most in doubte of.

D.

D. I pray thee do as thou sayest & I shal wyth good will either make answer to them forthwith as well as I can, or shal take lōger respite to be aduised, or els parauenture agree to thine opinion therin, as I shal see cause. But first I would gladly knowe the cause why thou hast begonne this Dialogue in the English tongue, and not in the latine tongue, as the first cases that thou desired st to know myne oppinion be in, or in french as the substaunce of the lawe is. S. The cause is this. It is right necessarye to all men in thys Realme, bothe spirituall and temporall for the good ordering of their conscience to knowe many thinges of the lawe of England that they bee ignorant in. And though it had ben more pleasāt to them ẏ be learned in the latine tongue to haue had it in latin rather thā in English: yet neuertheiesse for as much as many can read English that vnderstand no latine, and some that cannot reade English: by hearing it red may learn dyuers thinges by it that they should not haue learned if it were in latine: Therefore for the profite of the multitude it is put into the English tonge rather then into the latin or frenche tongue. For if it had ben in frēchifew should haue vnderstād it, but they that be learned in the lawe, and they haue least neede of it, for asmuch as they knowe the Lawe in the same cases without it, and can better declare what conscyence wyll thereuppon than they that knowe not the lawe nothinge at all. To them therefore that bee not learned in the law of the realme this treatise is specially made for thou knowest well by such studies thou hast

First of multitude.

taken to some knowledge of ỹ lawe of the realme that is to them moste expedient. D. Is this true that thou sayest and therfore I praye the to procede to thy questions.

¶ The first question of the Student.

¶ The firste Chapter.

IF tenant in taile after possibilitie of issue extict doe wast whether doth he thereby offend in cõscience though he bee not punishable of waste by the lawe. D. Is the lawe clere ỹ he is not punishable for the waste? S. ye verely. D. And what is the lawe of tenauntes for terme of lyfe, or for terme of yeres if they do waste? S. They bee punishable of waste by the statute & shal yeld treble damages, but at the cõmõ lawe before the statute they were not punishable. D. But whether thinkest thou that before the statut they might haue done waste with conscięce because they were not punishable by the lawe? S. I think not for as I take it: the doing of the waste of suche particuler tenauntes for tearme of lyfe, for terme of yeres or of tenauntes in dower, or by the curtesie: ỹ prohibite by the lawe of reason, for it seemeth of reason ỹ when such leases be made, or that such tyties in dower or by the curtesie be geuen by the lawe that there is onely geuen vnto them the annual profits of the lande and not the howses and trees and the graueil to digge and carye awaye, whereby the whole profite of thein in ỹ reuersiõ, should

shoulde be taken away for euer. And therefore at the cõmon law for wast done by tenant in dower or tenaunt by ỹ curtesie there was punishement ordained by the lawe by a prohibicion of waste wherby they should haue yelded damages to the value of the wast. But against tenant for term of lyfe or for terme of yeres lay no such ꝓhibiciõ, for there was no maxime in the law therin against thẽ as there was against ỹ other. And I think ỹ cause was forasmuch as it was iudged a folye in the lessour that made such a lease for terme of life or for terme of yeres: that at that time of the lesse he did not prohibite them that they should not do waste, and sith he did not prouide no remedye for hys seife, the lawe would none prouyde.

But yet I thinke not that the entent of ỹ lawe was ỹ they might lawfully & with good cõsciẽce do wast, but against tenauntes in dower and by the curtesie the lawe prouided remedye for they had theire tytle by the lawe.

And verely me thinketh that this tenant in taile as to doing of wast, shoulde be like to a tenaunt for terme of lyfe, for hee shall haue the Lande no lenger then for tearme of his lyfe, no more than a tenaunte for terme of lyfe shall, and the waste of this tenaunt is as greate hurte to hym in the reuercion or the remainder, as is the waste of a tenaunt for terme of lyfe, and yf hee aliene, the donour shall enter for the forfeyture as hee shall vppon the alienacion of a tenant for terme of life and if hee make defaulte in a Precipe quod reddat the donoure shalbee receiued as hee shalbee vppon the defaulte of a tenaunt for terme of lyfe

& therfore me thinketh hee shal also bee punisha-
ble of waste, as tenant for terme of lyfe shall. D.
If hee alien, the donour shall enter as thou saiest
because the alienacion is to his disheritaunce, &
therfore it is a forfeiture of his estate: and that is
by an auncient Maxime of the lawe that gee-
ueth that forfeiture in that selfe case, & if he make
default in a Pr̄ quod reddat: hee in the reuerciō,
as thou saiest shalbee receiued, but that is by the
statut of westm̄. ii. for at the common lawe there
was no suche receit, and as for the statute ꝑ ge-
ueth the accion of wast against a tenant for term
of life & for terme of yeares it is a statute penal &
shal not be taken by equitie, & so there is no re-
medy geuen against him, neither by common lawe
nor by statute, as there is against tenant for term
of lyfe, and therfore hee is vnpunishable of waste
by the lawe. D. And thoughe hee bee vnpunis-
hable of waste by the lawe: yet neuertheiesse me
thinketh hee maye not by conscience do that that
shalbee hurtefull to the enheritaunce after hys
tyme, sith hee hath the lande but for terme of hys
lyfe no more then a tenaunt for terme of lyfe
maye, for then hee shoulde doe as hee wouide
not bee doone vnto, for thou agreest thy selfe that
though a tenaunt for tearme of lyfe was not pu-
nishable of waste before the statute, that yet the
lawe iudged not that hee might ryghtfully and
wyth good conscience doe waste. And therefore
at this daye if a feffement be made to the vse of a
man for terme of life, though there lye no accion
against hym for waste, yet he offendeth in con-
science if hee doo waste, as the tenaunt for terme
of

of lyfe dyd afore the statute, when no remedy lay against him by the lawe. S. That is trewe but there is greate diuersitie betwene thys tenaunt and a tenaunt for terme of lyfe: for thys tenaunt hath good auctoritie by the donour to do waste, and so hath not the tenaunt for terme of life, as it is sayde before. For the estate of a tenaunt in tayle after possibilitie of issue extinct is in this maner, when lands be geuen to a man & to his wife, and to the heires of their two bodies begotten, and after the one of them dyeth without heires of theire bodies begotten, then hee or shee ỹ ouerliueth is called tenant in tayle after possibilitie of issue extinct, because there can neuer by no possibilitie be any heire that maye enherite by force of ỹ guifte. And thus it appeareth ỹ the doness at ỹ time of the guift, receiued of ỹ donoure estate of enheritance, which by possibilitie might haue continued for euer, wherby they hadde power to cutt downe Trees and to doe all thynge that is waste, as tenant in fee simple might, and that auctoritie was as strong in the lawe as if ỹ possoure that maketh a leafe for terme of lyfe saye by expresse woordes in the leafe ỹ the lesse shall not be punishable of waste. And therefore if the donour in this case had graunted to ỹ doness that thy should not be punishable of waste, that graunt had ben voyd because it was excluded in the guifte before, as it should be vpon a gift in fee simple: & so forasmuch as by ỹ first guyfte & by ỹ liuere of season made vppon the same the doness had auctoritie by the donour to do waste, Therefore though the one of that doness be nowe dead

with

without issue, so that it is certaine that after the death of the other, the lande shall reuerte to the donour, yet the auctoritie that they hadde by the donour to do wast, cõtinueth as long as the gifte & the liuerie of season made vppon ỹ same contynueth: & I take this to be the reals why he that hath not haue in aide as tenant for terme of life shal, ỹ is to say, for that he cannot aske healpe of that maxime, whereby it is ordeined that a tenant for terme of life shall haue in aide, for he cannot saye but that hee tooke a greater estate by the liuerye of season ỹ was made to him, whiche yet continueth then for terme of life, & so I think him not bound to make any restitucion to him in ỹ reuercion in this case for ỹ wast. D. Is thy mynd only to proue ỹ this tenaunt is not bounde to make restitucion to him in the reuersion for the waste: or that thou thinkest that he may with clere conscience do al maner of wast? S. I intẽd to proue no more but that hee is not bound to restitucion to him in the reuercion. D. Than I wyll right well agree to thine oppinion for the reason that thou hast made, but if thy mynd had ben to haue pued ỹ he might with cleare cõscience haue done al maner of wast, I would haue thought ỹ contrary thereto, and that the tenaunt in fee symple may not do all manner of waste and destruccion with conscience, as to pull downe houses and make pastures of Cities and townes, or to doo suche other actes whiche bee against the common wealthe. And therefore some wyll saye that tenaunte in fee symple maye not, wyth conscyence destroye hys woodes and coale pyt-

tes

ges whereby a whole countrey for theire money haue had fuel. And yet though he do so hee is not bound by cõscience to make restitucion to no pson in certaine. But now I pray thee ere thou proceede the second case, yͭ thou wilt somwhat shewe me what thou meanest when thou saiest at yͤ cõmon lawe it was thus or thus I vnderstand not fully what thou meanest by that terme at the cõmon lawe. S. I shall with good will shewe thee what I meane thereby.

¶ what is ment by this terme when it is sayde thus it was at the common lawe.

The seconde Chapter.

Cõmõ lawe

The common lawe is taken three manner of wayes. Firste it is taken as the lawe of thys realme of Englande diſcerned from all other lawes, and vnder this manee taken, It is often tymes argued in the lawes of Englande what matters ought of right to be determined by the cõmon lawe, & what by yͤ Admirals court or by yͤ spirituall court, & also if an obligacion beare date out of yͤ realme as in Spaine, Fraūce, or such other, yͤ is sayd in the lawe and trouth it is that they be not pleadable at yͤ cõmon lawe. Secõdly the common lawe is taken as the kinges courtes of his benche or of the common place, and yt is so taken when a plee is remoued out of aunciente demeane for that the Lande ys frank fee and pleadable at the common lawe, that ys to saye in the kynges courte and not in auncient demeane.

Admirall

spirituall court

obligacõ

frank fee.

And

base courte

And vnder this maner taken, it is oftentimes pleaded also in base courtes, as in courtes Barons, the countye and the court of Oppouders & such other this matter or that &c. ought not to be determined in that court but at the common law that is to say in the kinges courtes &c. Thirdly, 3 by the comon lawe is vnderstande suche thinges as were lawe before anye statute made in that point that is in questiō: so ỹ that point was holden for Lawe by the generall or particuler customes and Maximes of the Realme or by the lawe of reason and the law of god: no other lawe added to them by Statute nor otherwyse as in the case before rehearsed in the firste Chapter where it is said that at the comon lawe tenaunt by the curtesie and tenaunt in dower were punishable of waste, that is to saye, that before any statute of waste made they were punyshable of waste by the grounde and Maximes of ỹ lawe vsed before the statute made in that poinct. but tenaunt for terme of lyfe ne for tearme of yeares were not punishable by the laide groundes and maximes tyll by the statute, remedy was geuen againste them: and therfore it is laide that at the common law they were not punishable of waste. D. I praye the nowe proceede vnto the seconde question.

¶ The second question of the Studente.

The.iii. Chapter.

If a man bee outlawed & neuer had knowledge of the sute, whether may the kyng take all hys good, and retaine them in conscience as he maye by the law. D. what is the reason why they bee forfaited by the law in that case? S. The verye reason for that it is an olde custome and an olde Maxime in the Lawe, that he that is outlawed shall forfait his goodes to the king, and the cause why that Maxime began was this, whan a man had done a trespas to other or an other offence wherefore processe of outlagary lay, & he that the offence was doone to hadde taken an action against him accordynge to the lawe, yf hee hadde absented hym selfe and hadde hadde no Landes, there hadde bene no remedy against hym: for after the lawe of Englande no manne shall be condempned without aunswer, or that he appeare & wyll not aunswere, excepte it bee by reasone of a nye statute. Therefore for the punisheimente of suche offendours as wyll not appeare to make aunswere and to be iustified in the kynges courte, yt hathe beene vsed wythoute tyme of mynde, that an attachement in that case shoulde bee directed against hym retournable in the kinges benche, or the common place, and yf it were retourned thereupon that hee hadde nought whereby he myght be attached, that then should goe forthe a Capias to take his parsonne, and after an alias Capias, & then a Pluries. and if it were returned vpon euerye of the sayde Capias that he coulde not be founde and he appeared not then should an exigent be directed against hym, whiche shoulde haue so longe daye of retourne, that

that fiue counties might be holden before the re-
turne thereof and in euery of the said fyue coun-
ties the defendant to be solemnelye called: and yf
he appeared not, then for his cõtumacy & diso-be-
dience of the lawe, the corroners to geeue iudge-
ment that he shalbe outlawed, whereby he shall
forfeit his goods to the king and leese dyuers o-
ther aduantages in the lawe ẏ needeth not heere
to be remembred now. And so because he was in
this case called according to the lawe & appeered
not: that seemeth that the king hath good tytle to
the goodes both in law and conscience.

Common
ingement
in Actions.

yeard

D. If he had knowledge of the suite in verye
dede it seemeth the king hath good title in cõscy-
ence as thou saiest. But if he had no knowledge
therof: it semeth not so, for the default that is ad-
iudged in him (as appeareth by thine owne rea-
son) is his cõtumacye & dissobedience of the law:
and if he were ignorant of the suite, then canne
there be assigned to him no disobedience for a dis-
obedience implyeth a knowledge of ẏ hee should
haue obeyed vnto. S.

It seemeth in this case that he should be compel-
led to take knowledge of the suite at his parell,
for sith he hath attempted to offende the lawe: yt
seemeth reason that he shall be compelled to take
hede what the law wil do against him for it, and
not onlye that: but that he should rather offer a-
mendes for his trespasse then for to tarye tyll hee
were sued for it. And so it semeth the ignorance
of the suite is of his owne default, specially e
sith in the lawe is sette suche order ẏ euery man
may know if he wil what suite is taken agaynst

ẏ offẽdo
should take
heed

hym

him, & may see the recordes ther of when hee will & so it semeth ỹ neither the party nor the lawe bee not bound to geue him no knowlege therin. And ouer this I would somwhat moue further in this mat thus. That thoughe ỹ accion were vntrue & the defendaunt not guilty, that yet the goods bee forfaited to the kinge for his not apparaunce in lawe & also in conscience, and that for this cause the king as soueraigne, and head of the lawe ys bounden of iustice to graunt such writes & suche processes as bee appointed in the lawe to euery person that will complaine, be his surmyse true or false, and thereupon the king (of iustice) offereth as well to make processe to bring the defendant to aunswere when he is not guilty as when hee is guilty and then when there is a maxime in ỹ lawe, that if a man be outlawed in suche maner as before appeareth that hee shall forfait all hys goodes to the kinge, and maketh no exception whether the accion bee true or vntrue, it seemeth that the saide Maxime more regardeth the generall ministracion of Iustice then the particuler right of the partye, and therefore the property by the outlawrie & by the saide maxime ordeined for ministracion of iustice is altered & is geuen to the king as before appeareth & ỹ both in lawe in conscience as wel as if ỹ accion were true. And then the party that is so outlawed is driuen to sue for his remedye agaynste hym that hathe so caused him to be outlawed vppon an vntrue accion. D.

bound.

If hee haue not sufficient to make recompence or dye before recouerie can be hadde, what remedye is hadde then. S. I thynke no remedye

and

and for a further declaracō in this case & in such other like cases where the propertie of goodes maye be altered without assente of the owner yt is to consider that the propertie of goodes bee not geeuen to the owners directiue by the lawe of reason nor by the lawe of God, but by the law of man, and is suffered by the lawe of reason and by the lawe of god so to be. For at the beginning all goodes were in common, but after they were broughte by the lawe of man into a certain property so that euery man might knowe his owne, and than whan suche propertye is geeuen by the law of man, ỹ same lawe may assigne suche condicions vpon the property as it listeth, so they be not against the lawe of God ne the lawe of reason, and maye lawfully take away that it geueth and appoint howe longe the propertie shall continue. And one condicion that goeth with euerye propartie in this realme is if hee ỹ hath the propartie be outlawed accordyng to such processe as is ordeined by the lawe, rhat he shall forfait the property vnto the kyng, and diuers other cases there be also, whereby propertie in goods shall be altered in the lawe and theryghte in landes also without assent of the owner, wherof I shal shortly touche some without saying any auctoritie therein, for the more shortnes. First by a sale in open market the propartie is altered . Also goods stollen and seysed for the kyng or weyued be forfait onles appel or inditement bee sued. Also strayes if they bee proclaimed & be not after claimed by the owner ẅin the yere, be forfaite & also a deodand is forfait to wō so euer the propar-

Comon.

market ceased.

strays

deodand.

partie was before (except it belonged to ỹ king) & shalbe disposed for the soule of hym that was slaine therwith: and a fyne wyth a nonclaime at the comynon lawe was a barre yf clayme weare not made within .v. yeare as it nowe by statute, if the clayme be not made within .v. yeres. And all these forfaitures were ordeined by the lawe vpon certaine consideracions whiche I omyt at this time, but certaine it is ỹ none of them was made vpon a better consideracion than this forfaiture of outlagary was. For if no especial punishment shoulde haue beene ordeyned for offenders ỹ would absente them selfe and not appere whan they were sued in the kings courts, many sutes in the kinges courtes should haue beene of smale effect. And sith this Maxime was ordeyned for the execucion of Justice & as much done therein by the common lawe as policie of man coulde reasonably deuise too make the partie haue knowledge of the sute, and nowe is added thereto by the statute made the first yere of kyng Henry the eyght that a writte of proclamacyon shalbe sued if the partie be dwellyng in another shire, it semeth that such title as is geuen to the kyng therebye is good in conscience especyallye seeyng ỹ the kyng is bounden to make processe vpon the surmise of the plaintife and maye not examine but by the plee of the partie whether the surmise be true or not. But if the partye bee retourned .v. times called, where in dede he was neuer called (as in the seconde case for the laste Chapter of the saide dialogue in latin is conteines) than it semeth the partie shal haue good re-

fyne

.1. yere.

v. yeres.

4.H. anno

primo

Quinto.

Surmise

Fuit ex returno

made by petition to the kyng, specially if he that made the returne be not sufficient to make recompence or dye before recouery can bee had. D. Now sith I haue hard thine opinion in this case wherby it appeareth that many thinges must be seene or a ful and a plaine declaracio cā bee made in this behalf, and seeyng also that ỹ plaine answer to this case shal geue a great light to diuers other cases that maye come by such forfaiture. I pray thee geue me a farther respit or ỹ I shewe the my full opinion therein, and hereafter I shal ryght gladly do it. And therfore I pray thee proceede now to some other case.

¶ The Thirde question of the student.

The.iij. Chapter.

Waste.

IF a straunger do waste in landes that another holdeth for terme of lyfe without assent of the tenaunt for terme of life: whether may he in the reuercion recouer treble damages and the place wasted against the tenaunt for terme of lyfe accordyng to the statute in conscience as he may by the law, if the straūger be not sufficient to make recompence for the waste done. D. Is the law clere in this case ỹ he in the reuersion shall recouer against the tenaunt for terme of lyfe thoughe that he assented not to the doyng of waste. D. Ye verely, and yet if the tenaunt for terme of lyfe had ben bounden in an obligacio in a certain some of money that he should do no waste: he shold not forfait his bond by the waste of a straunger, and

Obligacion

the

like inferences / like cases

the diuersitie in this. It hath beene vsed as an auncient maxime in ỹ lawe ỹ tenant by the curtesy and tenant in dower should take the land withe this charge, ỹ is to say, that they shoulde doe noe waste themselfe nor suffer none to be done, & whā an accion of waste was geuen after againste a tenaunt for terme of life, than was he taken to bee in the same case as to ỹ point of waste as tenaunt by the curtesye and tenaunt in dower was, that is to say, ỹ he should do no waste nor suffer none to be done, for there is another maxime in ỹ lawe of Englande that all cases lyke vnto other cases shalbe iudged after the same lawe as the other cases be, and sith no reason of diuersitie can bee assigned why the tenant for terme of lyfe after an accion of waste was geuen against him, shoulde haue any more fauour in the lawe than the tenant by ỹ curtesy or tenant in dower should, therefore he is put vnder the same maxime as they be, that is to say, that he shal do no waste ne suffer nōe to bee done, & so it seemed that the lawe in this case dooth not consider the abilitie of the parson that doth the waste whether he be able to make recompence for the waste or not. But the assens of the saide tenants wherby they haue wilfullye taken vpon them the charge to se that no waste shall bee done. D. I haue harde that if houses of these tenants be destroied ỹ sodeine tempest or wythe straunge enemies ỹ they shal not bee charged ỹ waste. S. Trouthe it is. D. And I thynk ỹ reasō is because they cā haue no recouery ouer S. I take not ỹ for the reasō: but ỹ it is an olde reasonable Maxime in the lawe ỹ they shoulde,

waste.

no waste.

be discharged in those cases, how be it some wyll say ꝑ in those cases the lawe of reason doth discharge them & therfore they say ꝑ if a statut were made ꝑ they should bee charged in those cases of wast ꝑ the statute were against reason & not to be obserued, but yet neuertheisse I take it not so, for they mighte refuse to take suche estate yf they would, & if they wil take the state after the lawe made: it semeth reasonable that they take it with the charge and with the condicion that is appointed therto by the lawe though hurt myght folow to them afterward thereby, for it is often times seen in the law ꝑ the law doth suffer hym to haue hurt wout help of the law that wil wilfully runne into it of his owne acte not compelled therto, and adiudgeth it his folly so to ren in to it, for which folly he shall also bee many times without remedy in conscience. As if a man take landes for terme of life, and bindeth himselfe by obligacion that he shal leue the lande in as good case as hee found it, if the houses be after blowen downe with tempest or destroyed with strange enemies as in the case ꝑ thou haste put before he shalbe bound to repaire them or els he shall forfait his obligacion in lawe & conscience, because it is his owne act to binde him to it, & yet the lawe would not haue bound him therto as thou haste sayd before. So me thinketh that the cause whye the said tenants be discharged in the lawe in an accion of wast whan the houses bee destroied by sodeine temnest or by straūge enemies, is by a special reasonable maxime in the lawe, wherby they be excepted frō ꝑ other general bōd before reherfed,

wilfull.

Londs

sed that is to say, they shal at their perill see that no wast shalbe done, and not by the law of reasō and sith there is no maxime in this case too helpe this tenant ne that he cānot be holpen by the law of reason, it semeth that he shalbe charged in this case by his owne acte both in lawe & conscience. whether the straunger be able to recompēce him or not. D. I doubt in this case whether the maxime that thou speakest of be reasonable or not ẏ is to saye that tenauntes bye the curtesye and tenaunts in dower were bouñden by the common law that they should do no wast thēselfe, & ouer that at their peril to see that no wast shoulde bee done by none other. For that law semeth not reasonable that bīdeth a mā to an impossibility. And it is ipossible to preuēt that no wast shalbe done by straūgers, for it may be sodeinly done in the night ẏ the tenaunts can haue no notice of, or by great power that they be not able to resist, & therfore me thīketh ought they not to bee charged in those cases for the waste, without they may haue good remedy ouer, & than percase ẏ said maxime were sufferable, and els me thinketh it is a maxime against reason. S. As I haue said before no man shalbe compelled to take ẏ bonde vpon hym but he that will take the land, and if hee will take the land: it is reasō he take the charges as ẏ law hath appointed with it, & than if any hurt growe to him therby: it is through his owne acte & hys owne assent, for he might haue refused the lease if he would.

waste

Landes & Landys.

D. Though a man may refuse to take estate for terme of life or for terme of yeres & a womā may

refuse to take her dower, yet tenant by ỹ curtesy can not refuse to take his estate, for immediatlye after ỹ death of his wife, ỹ possession abideth still in him by the act of the lawe without enter, and than I put the case that after the death of hys wyfe, hee woulde waiue the possession and after wast were done by a straũger, whether thinketh thou that he should aunswere to the wast. S. I thinke he shoulde by the lawe. D. And how standeth that with reason, seeinge there is no default in hym. S. It was hys default, and at his own perpl that he would mary an inheritrix whereupon suche daunger myght folowe. D. I put case that he were within age at the mariage or that the lande descended to his wife after hee maried her. S. There thou mouest a farther dout than the first question is, and thoughe it were as thou saiest, yet thou canst not saye but that there is as great default in him as is in him in the reuersion, and that ther is as great reason why he should be charged with the wast as that he in the reuersion should be disherited and haue no maner remedy ne yet no profit of the lande as the other hath, and though the said maxime may be thought very straight to the said tenaunts: yet is it for to be fauoured as much as may be reasonably because it helpeth much the commõ welth for it hurteth the common wealth greatly whan woodes & houses been destroied, & if they shoulde answer for no wast, but for wast done by thẽselfther might be wast done by strangers by cõmaũdement or assent in such colourable manner that they in the reuersion should neuer haue profe of

their

their assent. D. I am contente thyne opynyon stand for his time, and I pray the now procede to another question.

¶ The fourth question of the student.

The.v.Chapter.

If hee that is the very heire be certified by the ordynary bastard, and after bringe an accion as heire against another parson, whether may anye mā knowyng ẏ trouth be of counsell wᵗ the tenant & pleade the said certificat against the demaūdāt by conscience or not D. Is the law in this case ẏ al other against whō the demaundāt hath title shal take aduaūtage of this certificat as wel as hee at whose sute hee is certified bastard: S. Ye verely, & that for two causes, whereof ẏ one is this. There is an olde maxime in the lawe that a mischiefe shal be rather suffred than an inconuenience, & then in this case if another writ should afterward be sent to another Bishop in another accion to certify whether he were bastard or not, paraduenture that Bishop would certifye that he were mulier, that is to saye lawfully begottē, and than he should recouer as heire, and so hee should in one selfe court be taken as mulier, and bastarde, for auoydyng of whiche contrariositie, the law wil suffer no mo writtes too goe forthe in that case, and suffreth also all men to take aduauntage of ẏ certificat rather thā to suffer such a cōtradiction in ẏ court which in ẏ law is called an incōueniēce, & the other cause is because this

bastard

Counsell.

certificat

1

mulier.

1 cōuenit

2

Certificat of Bastardy highest triall

certificat of the Bishop is the hiest triall that is in the law in this behalfe. But this is not vnderstande but where bastardy is layde in one that is partie to the writ for if bastardie bee laide in one that is a straunger to the writ as if vouche pray in ayde or such other, than that bastardye shal be tried by .xij. men by which triall hee in whom the bastardy is laide shal not be cõcluded because he is not priuie too the tryall and maye haue no attaint, but he ꝑ is party to the issue may haue attaint, and therefore hee shal bee concluded & none other but he, & forasmuche as the sayde Maxime was ordained too eschewe an inconueniencie (as before appeareth) it semeth ꝑ euery man learned maye with conscience pleade the saide certificat for auoiding therof, and geue cõsaile therein to the party according vnto the lawe, for els ꝑ saide inconueniencie must nedely follow. But yet neuertheles I doe not meane thereby ꝑ the partye may after whan he hath barred the demaũdaunt by the sayde certificat retaine the land in conscyence by reason of the saide certificat, for thoughe there be no lawe to compell him to restore it, yet I thynk well that in conscience he is bounde to restore it, if he know ꝑ ꝑ demãdãt is ꝑ very true heire: wherof I haue put diuers cases like in the xbij. Chap. of our first dialogue in Latin, but my intent is ꝑ a mã lerned in ꝑ law in this case & other like may w cõscięce geue his cõsaile according to ꝑ law in auoiding of such thigs as ꝑ law think it shold for a reasonable cause be eschewed.

12. Bastardy

restitucõ

Counsell.

D. Though he that doeth not knowe whether hebee bastard or not maye geue his counsaile &

also

also pleade the saide certificat: yet I thinke ꝑ he that doth knowe himself to be the very true heire may not pleade it, and ꝑ is for two cauſes wher of the one is this.

Euery man is bound by the lawe of reason to do as he woulde be done to, but I think ꝑ if hee that pleadeth that certificat were in like case, hee would think ꝑ no man knowing the saide certificat to be vntrue might & conscience plead it against him, wherfore no more may he pleade it against none other.

The other cause is this, although the certificat be pleaded, yet is the tenant bounden in conscience to make restitucion thereof as ꝑ hast said thy selfe, and than in case ꝑ he would not make restitucion, than he that pleadeth the plee, should ren therby in like offēce, for he hath holpen to set the other man in such a libertie ꝑ hee maye chose whether he will restore the lande or not, & so hee should put him selfe to the ieopardye of another mans conscięce. And it is writen Ecclesiasti. iij. Qui amat periculū: peribit in illo. That is, he ꝑ wilfully will put himselfe in ieopardy to offend, shal perish therein, and therefore it is the surest way to eschew perils from him ꝑ knoweth ꝑ he is heire, not to pleade it & as for ꝑ incōueniēce ꝑ ꝑ saist must nedely folow but ꝑ certificat be pleaded: as to ꝑ it mai be āswered ꝑ it may be pleded by ſōe other ꝑ knoweth not ꝑ he is very heire, & if ꝑ case be so far ꝑput ꝑ ther is none other lerned ther but he, thā me thīketh ꝑ he shal rather sufker ꝑ said incōueniēce thā to hurt his owen cōsciēce, for alway charite begineth at himselfe & so euerye

restitucō.

pleded.

Charity

uery man ought to ſuffer all other offēces rather than he himſelfe woulde offende. And now that thou knowest mine opinion in this caſe I praye thee procede to another queſtion.

¶ The fifth queſtion of the ſtudent.

The.vi. Chapter.

subpena Cōſcia.

VVHether maye a man with conſcience bee of counſayle wyth the plaintife in an accion at the common lawe knowing ꝑ the defendant hath ſufficient matter in cōſcience wherby he may bee diſcharged by a Sub pena in the chaūcery whiche he cannot pleade at the common law or not?

D. I praye thee put a caſe therof in certain, for els the queſtion is very general.

Obligacō

S. I will put the ſame caſe that thou putteſt in our firſt dialogue in Latin the.x.chapter that is to ſay if a man bound in an obligacion pay the money and taketh none acquitaunce ſo ꝑ by the common lawe he ſhall bee compelled to paye the money againe for ſuch conſideracion as appereth in the.xv.chapter of the ſaid dialogue wher it is ſhewed evidently how the law in ꝑ caſe is made vppon a good reaſonable ground much neceſſary for al the people, how beeit ꝑ a man maye ſometime throughe his owen default take hurt therby wherin I pray thee ſhew me thine opinion.

D. This caſe ſeemeth to bee like to the caſe that thou haſt put nexte before this, and ꝑ hee that knoweth the paiment to be made doth not as hee would be done to if hee gene counſell ꝑ an acci-

Sergeants othe.

on should be taken to haue it paid againe.

S. If he be swoꝛne to geue counsell accoꝛdyng to the law as sergeants at the law bee, it semeth he is bounde to geue counsaile accoꝛdyng to the law, foꝛ els he shoulde not perfourme his othe.

D. In those woꝛds (accoꝛdyng to the lawe) is vnderstand the law of god and the law of reasō as well as the lawe and customes of the realme. foꝛ as thou hast said thy self in our first dialogue in Latin, ꝑ the law of God and the law of reasō bee two especiall groundes of the lawes of Englād, wherfoꝛe as me thinketh he may geue no cōsel (sauing his othe) neyther againste the lawe of God noꝛ ꝑ law of reason, and certaine it is that this article, that is to say, ꝑ a man shall do as he would be done to, is grounded vpon both ꝑ said laws. And first ꝑ it is groūded vpō the lawe of reason, it is euident of it selfe. And in the .vi. chapter of S. Luke it is said. Et ꝓout vultis vt faciant vobis homines, & vos facite illis similiter that is to saye al ꝑ other mē should do to you: do you to them, and so it is groūded vpon the lawe of god, wherfoꝛe if he should geue coūsail against the defendant in ꝑ case, hee shoulde doo againste bothe the saide lawes. S. If the defendaunt had none other remedye but the common lawe, I would agree well it were as thou sayst, but in this case he may haue good remedy by a subpena and this is the waye ꝑ shall induce him directlye to his subpena, ꝑ is to say, whan it appereth that the plainetife shall recouer by the lawe. D. Though ꝑ defēdāt may be discharged by subpeñ yet the bringing in of his ꝓofes there wil bee to

subpena

the

the charge of the defendaunt, and also the proues may dye or they come in. Also there is a grou̅d in ꝯ law of reason, quod nihil possimus contra veritatem, that is we may do nothinge againste the trouth, and sith hee knoweth it is trouth that ꝯ money is paide he may do nothinge againste the trouth, and if he should be of counsaile wyth the plaintife he must suppose and auerre ꝯ it is the very due det of the plaintife, & that the defendāt wholdeth it from him vnlawfullye whyche hee knoweth himselfe to be vntrue, wherfore he may not ye conscience in this case be of counsaile with the plaintife, knowyng ꝯ the playntife is payde al ready. wherfore if thou bee contented ye thys aunswer I pray the procede too some other quelidn. S. I wil with good will.

Const.

¶ The.viij.question of the student

The.viii.Chapter.

A Man maketh a feoffement to the vse of hym & of his heires, & after the feoffoure putte he in his bestes to manure the grounde & the feoffe taketh them as damages feasant & putteth them in pounde and the feoffour bryngeth an accion of trespasse against him for entring into his grou̅d &c. whether may any man knowing the saide vse be of counsaile with the feoffe to auoide ꝯ accion D. May he by the common law auoide that accion seyng that the feoffour ought in conscience to haue the profytes. S. yee verely, for as to the cons

common law the whole interest is in the feoffe, & if the feoffe will breake his conscience and take the profittes: ẏ feoffour hath no remedy by the cō mon law, but is driuen in that case to sue for his remedy by subpena for the profits, and to cause him to refeoffe him againe, and ẏ was sometime ẏ most common case where ẏ subpena was sued ẏ is to saye before the statute of Rycharde the third but sith ẏ statute the feoffour may lawfully make a feoffement. But neuertheless for the profittes receiued, the feoffour hath yet no remedy but by Sub pena as hee had before the sayde estatute. And so the supposeil of this accyon of trespasse is vntrue in euery point as to ẏ comon lawe.

D. Though the accīō be vntrue as to the law yet he ẏ sueth it ought in conscience to haue ẏ he demaūdeth by the accion, ẏ is to saye, damages for the profites, & as it semeth no man may with conscience geue counsaile againste ẏ he knoweth conscience would haue done. D. Though conscience would he should haue ẏ profites, yet conscience will not ẏ for ẏ attaining therof ẏ feoffour shold make an vntrue surmise. Therfore against the vntrue surmise euery mā may with cōscīēce geeue his counsaile, for in that doing he resisteth not the plaintife to haue the profits, but he with stādeth him ẏ he should not maintain an vntrue accion for the profits. And it suffiseth not in the law ne yet in cōscīēce as me seemeth that a man haue right to ẏ he sueth for, but ẏ also hee sue by a iust menes, & that he haue both good right & also a good & a true cōueiāce to come to his ryghte

for

tytle fro fathers & from moder.

for if a man haue right to landes as heire to hys father and he wil bring an accion as heire to hys mother ẏ neuer had right, euery man may geeue counsaile against ẏ accion thoughe hee know hee haue right by another meanes, & so as mee thynketh he may do in dilatories, whereby the partie may take hurt if it were not pleaded, though hee knowe the plainetife haue right as if the party or ẏ towne be misnamed or if the degrees in writts of entre be mistaken, but if the parte should take no hurt by admitting of a dilatory ther he ẏ knoweth ẏ the plainetife hath right may not pleade that dilatory with conscience as in a formedone to pleade in abatement of ẏ writ because he hath not made himselfe heire too him ẏ was last seysed, or in a writ of right for ẏ the demaundaunt hath omytted one ẏ tended right ne suche other ne he may not assent to the castyng of an Essoine nor protection for him if hee knowe that the demaundaunt hath right ne he may not vouch for him excepte it be that he knoweth ẏ the tenaunt hath a true cause of a voucher, and of lien, & that he doth it to bring him therto, & in lykewyse hee may not pray in ayde for him: onlesse he knowe ẏ pray haue good cause of voucher and lien ouer, or that he knowe that the pray hath somewhat to pleade ẏ the tenant maye not pleade as villeyne in the demaundaunt or such other. D.

Though the plainetife hath brought an accion ẏ is vntrue and not maintenable in the lawe, yet ẏ defẽdant doth wrong to the plaintif in the withholding of the profytes as well before the accyon brought as hanging the accion, and that wronge as

Consell dilatories

degrees in writs

pledge

ayde

lien ouer

profits

as it semeth the counsailour doth maintaine and also sheweth himselfe to fauour ỹ partie in that wrong whan he geueth counsaile againste the action. Counsaille

S. If the plaimetife do take that for a fauour and a maintenaunce of his wronge, hee iudgethe farther than the cause is geuen, so that the counsailour do no more but geue counsaile againste ỹ accion, for thoughe hee geue him counsaile to withstand the accion for the vntruth of it, and that he should not cõfesse it & to make therby a fine to ỹ king without cause yet it may stand with reason that he may geue coũsaile to the party to yeide ỹ profits, & therfore I think hee may in this case be of counsaile with him at the common law & be against him in the chauncerye and in either court geue his counsaile without any contrariositie or hurt of conscience, and vppon this ground it is ỹ a man may with good conscience be of counsaile with him ỹ hath land by discent or by a discontinuaunce without title, if he that hath the ryghte bringe not his accion accordyng to the lawe for the recouering of his right in that behalfe. fine to ye king

Counsell in champarty

¶ The seuenth question of the student.

The. vij. Chapter.

If a man take distres for det vppon an obligacyon or vppon a contract or such other thing ỹ hee hath right title to haue, but ỹ hee ought not by ỹ law to distrein for it, and neuertheles he keepeth distres obligaõ

the

Diuers restitucion

The same distresse in pound tyl he be paid of his duety, what restitucion is he bounde to make in this case, whether shal hee repaye the money because he is cõe to it by an vnlawefull meanes or onely to restore the partie for ẏ wrongful taking of ẏ distres or for neither, I pray you shew me. D. what is the lawe in this case. S. That he ẏ is distrained may bring a special accion of trespas against him that distreined, for ẏ he toke his beastes wrongfully & kept them till he made a fine & therfore he shal recouer ẏ fine in damages as he shal do for the residue of trespas, for ẏ taking of the money by such compulsion is take in the law but as fine wrongfully takẽ, thoughe it be his duetie to haue it. D. yet thoughe hee may so recouer, me thinketh ẏ as to ẏ repaiment of the money he is not bounde thereto in conscyence so ẏ he take no more than of right he ought to haue, for thoughe hee come to it by an vniuste meane yet whã ẏ money is paid him, it is his of right & he is not bound to repay it onlesse it bee recouered as thou saidst, and than whan hee hathe repaide it hee is as mee thinketh restored to his first acciõ, but to the redeliuere of ẏ beastes with such damages such hurt as he hath by ẏ distres, I suppose he is bound to make recõpence of thẽ in conscience without compulsion or sute in the law, for though he might lawfully haue sued for his duty in such maner as ẏ law hath ordred, yet I agree wel ẏ he may not take vpon him to bee his owen iudge & to come to his duty against the order of the lawe, and therefore if anye hurte come to the partie by ẏ disorder hee is bound to

Fenus.

restore

restore it. But I would thinke it were the more doubt if a man tooke such a distresse for a trespas done to him, and keepeth the distresse tyll amendes be made for the trespas; for in case that the damages bene not in certaine but bee arbytrable either by the assent of the parties or by .xii. men and it seemeth that there is no assent of the partye in this case specially no free assent, for that he dooth is by compulsion and to haue his distresse againe, and so his assent is not muche to be pondered in ỹ case, for all his assessing of him ỹ tooke the distresse and so hee hathe made hymselfe hys owne iudge and that is prohibited in all lawes, but in that case where the distresse is taken for dette, he is not his owne iudge, for the dette was iudged in certayne before by the firste contracte and therefore some thinke greate diuersitie betwene the cases. S. By that reason it seemeth that if hee that distraynethe in the firste case for the dett take anye thing for his dammages that hee is bounde in conscience to restore it agayne, for damages bee arbytrable and not certayne no more than trespas is, and mee seemeth that both in the case of trespasse and det hee is bound in conscience to restore that hee taketh, for thoughe hee ought in right to haue lyke summe as hee receiueth yet he ought not to haue the money that hee receiueth, for hee came to ỹ money by an vniuste meanes, wherefore he semeth he ought to restore it againe. D. And if hee shoulde bee compelled to restore it againe: shoulde hee not yet (for that hee receiued it once) bee barred of his firste accyon notwithstandinge the payement. S.

arbitrable

12.

agst

det

damage arbitrable

trespas.

restituo

default

I will not at this tyme clerelye assoyle thee that question, but this I will saye ꝯ if any hurt come to him therby, it is throughe his owne defaulte, for ꝯ he would do againste the lawe, but neuerthelesse a lyttle I wyll saye to thy question, that as mee seemeth when he hath repaied the moneye ꝯ he is restored to his firste accion. As if a man condemned in an accion of trespas paye the money & after the defendaunt reuerse the iudgement by a writt of errour and haue his money repayd then the pleintife is restored to his firste accion.

forward to action first

trespas

And therefore if hee that in this case tooke the money: restored ꝯ he tooke by the wrongful distresse: or that he ordered the matter so liberallye that the other murmure not, ne complayne not at it, me semeth he did very wel to be sure in cōscience: and therefore I woulde aduyse euerye manne to bee well ware howe hee distraineth in suche case againste the lawe. D. Thy counsaile is good & I note much in this case that the party may haue an accyon of trespas agaynst him that distrained so that hee is taken in ꝯ lawe but as a wrong doer, and therfore to paye the money agayne is the sure waye as thou hast sayde before. And I pray thee nowe shewe mee for what thinge a manne maye lawfully distraine as thou thinkest.

restitucō

¶ For what thing a man may lawfully distraine.

¶ The.ix. Chapter.

A man

lawful distress

A Man maye lawfullye distrayne for a rente seruyce and for all manner of seruyces, as homage fealtie, escuage, suite of courte, relefes and suche other. Also for a rent reserued vppon a guyfte in tayle, a lease for terme of lyfe, for yeres or at wyll, if hee reserue the reuercion: the feoffor shal distraine of common ryght thoughe there be no distresse spoken of. But in case a manne make a feoffement and that in fee by endenture reseruynge a rent hee shall not distrayne for that rente vnlesse a distresse bee expresselye reserued, and yf the feoffemente bee made wythouten deede reseruynge a rente that reseruacion ys voyde in the lawe, and hee shall haue the rent onelye in conscience and shall not distrayne for it, and like lawe is where a gift in tayle or a lease for terme of lyfe is made the remaynder ouer in fee reseruynge a rent that reseruacion is voyde in ỹ lawe. Also if a manne sealed of lande for terme of lyfe graunteth away his whole estate reseruynge a rent, that reseruacion is voyde in the lawe wythout it bee by endenture, and if it bee by endēture: yet hee shall not distraine for the rente but a distresse bee reserued. Also for amerciament in a leete the Lorde shall distrayne. But for amerciament in a court baron hee shal not distrayne.

Also if a man make a lease at Wighelmasse for a yere, reseruing a rent payable at the feast of the Annunciacion of our Lady and saincte Michell ỹ Archangel, in that case hee shall distrayne for the rent due at our Ladye day but not for ỹ rent due at Wighelmasse because the terme is expyred.

Wu if a man make a leafe at the feaft of Chriſt-
mas for to endure to the feaft of Chriſtmas next
folowing, that is to ſaye for a yeare reſeruinge a
rent at the aforeſaide feaft of the Annunciation
of our Lady and ſaint Michell the Archaungell
there he ſhall diſtraine for both the rents as lōg
as the terme continueth, that is to ſaye till that
aforeſaid feaft of Chriſtmas.

And if a man haue lande for tearme of lyfe of
John at Noke and maketh a leafe for tearme of
yeares reſeruing a rent, thet rent is behynd and
John at Noke dyeth, there he ſhal not diſtraine
becauſe his reuercion is determined.

Alſo if he to whoſe vſe feffees bene ſealed ma-
keth a leafe for terme of yeares, or for tearme of
life, or a gyft in tayle reſeruing a rent there the
reſeruacion is good and the leſſoure ſhall dy-
ſtrayne.

Alſo if a toſwneſhip be amerced & that neigh-
bours by aſſent aſſeſſeth a certaine ſumme vpon
euery inhabitaunt, & agree that if it be not payed
by ſuch a day: that certain pſons therto aſſigned
ſhal diſtrain. In this caſe the diſtreſſe is lawfull
if lorde and tenaunt be, & the tenaunt doth holde
of the lorde by fealtie and rent, and the lord doth
graunte awaye the fealtie reſeruinge the rent
and the tenaunt attourneth in this caſe hee that
was Lorde maye not diſtrayne for the rent, for
it is become a rent ſeek. But if a manne make a
gift in tayle to another reſeruing fealtye and cer-
taine rent, and after that hee graunteth awaye the
fealtie reſeruing the rent & the reuercion to hym
ſelfe, in thys caſe hee ſhall diſtrayne for the rent

for

for the graunte of the fealtie is voyde for the fe= distreb
aulty cannot bee seuered fro the reuercyon . Also
for heriot seruice the Lorde shall distraine & for
heriote custome hee shall cesse and not distraine.
Also if a rente bee assigned to make a particiō or
assignement of dower egall hee or she to whome
that rent is assigned may distraine and in al these
cases abouesaide where a manne maye dystraine not distrey
hee may not distraine in the night, but for dama= night
ges fesant, that is to saye where beastes do hurt
in his ground he may distrain in the night. Also
for wastes, for reparations, for accoumptes for
dets vpon contracts or such othrr no manne may
lawfully distraine.

¶ The.viii. question of the student.

for executors

¶ The.x. Chapter.

IF a man do a trespas and after make hys exe= tresspas
cutour and dye before any amendes made whe=
ther be hys executoures bounde in conscyence to
make amendes for the trespas yt they haue suf=
ficient goodes thereto, thoughe there bee no re=
medy against thē by the law to compell thē to it.
D. It is no doubte but they are bounde thereto
in conscience before anye other deede in charitie
they may do for him of their owne deuocion S.
Than would I weete if the testatour made le=
gacies by his will, whether the executours bee
bounde to do first, that is to saye to make amendes
for the tresspas or to paye the legacies, in case they
haue no goods to do both. D. To paye legacies Legacyes

For if they should first make recompence for the trespasse and than haue not sufficient to paye the legacies: they shoulde bee taken in the lawe as wasters of their testatours goods for they were not compellable by no lawe to make amendes for the trespasse because euerye trespasse dyeth with the parsone, but the legacies they shoulde bee compelled by the lawe spirituall to fulfill and so they shoulde bee compelled to paye ỹ legacyes of their owne goods, and they shall not be compelled thereto by no lawe ne conscience but if the case were that hee leaue sufficient goodes to doe bothe, then me thinketh they bee bounden to dooe bothe, and that they bee bounden to make amendes for the trespasse before they maye dooe anye other charitable deede for the testatoure of their owne mynde as I haue sayde before except the funeral expenses that bee necessarye whyche muste bee allowed before all other thynge. S. And what the prouynge of the testament? D. The ordinarie may nothinge take by conscience therefore, if there be not sufficient goodes beside for the funeralles to paye the dettes and to make restitucion. And in likewise the executoures bee bounde to paye dettes vpon a simple cõtract before anye other dede of charitie that they may doe for their testatour of their owne deuocio̅ thoughe they shall not bee compelled thereto by the lawe. S. And whether thynkest thou that they be bounde to dooe firste, that is to saye, to make amendes for the trespas or to paye the detts vpon a simple contract. D. To paye the detts for that is certayne and the trespas is arbitrable. S. Than

Than for the plainer declaracion of this matter and other lyke I pray thee shewe me thy mynde by what law it is ꝑ a man may make executours and that the executoures if they take vpon them bee bound to perfourme the will and dispose the goods ꝑ remaine for the testatour. D. I. think ꝑ it is best by the law of reason. S. And mee thinketh that it should bee rather by the custome of the realme. D. In all countreys and in all landes they make executours. S. That semeth to be rather by a generall custome, after ꝑ the lawe and custome of propertye was brought in than by the lawe of reason, for as long as all thinges were in common: there were no executours ne willes ne they needed not than ꝑ when property was after brought in: me thinketh that yet making of executours & disposing of goodes by will after a mannes death folowed not necessarilye thereupon, for it might haue beene made for a lawe that a manne shoulde haue hadde the property of his goodes onelye duringe his lyfe, & that than his dettes payed all his goodes to haue beene left to his wife and children or next of hys kynne without any legacies making thereof and so myght it nowe be ordained by statute, and the statute good and not againste reason, wherefore it appeareth that executours haue no auctority by the lawe of reason but by the lawe of manne. And by the olde lawe and custome of this realme a manne maye make executoures and dyspose his good by his will, and then his executoures shal haue the execucion therof & his heires shall haue nothing but if any perticuler custom help &

executors shall have all.

the executors shal also haue the whole power and
disposition of all his goods & chatels as wel re-
all as psonal, though no word be expressely spoke
in the will ỹ they shal haue them & they shal haue
also accions to recouer all Dettes due to the te-
statour though al dettes & legacies of the testator
be payde before & shal haue the disposicion of the
to the vse of the testatour & not to their owen vse,
& so me thinketh ỹ the auctoritie to make execu-
tours & that they shall dispose the goodes for the
testatour is by the custome of the realme. But
then I think as thou saiest ỹ by the lawe of God
they shalbe bounde to doe the first, ỹ is to ỹ most
profite of the soule of theire testatour where the
disposition therof is lefte to theire discrecion, and
that I agree well is to paye Dettes vppon con-
tractes and to make amendes for wrongs done
to the testatoure though they be compelled ther-
to by the lawe and custome of the realme if their
bee none other Dette nor legacye that they bee
bounde to paye by the lawe but if twoe seuerall
Dettes bee payable by the lawe than whyche
Dette they shall doe firste in conscyence I am
somewhat in doubte. D. Let vs first know
what the common lawe is therein. S.
The common lawe ys that if the testatoure owe
x.li. to twoo menne seuerallye by obligacion or by
suche other maner that an accion lyeth agaynste
his executours thereof by the lawe, and hee lea-
ueth goodes to paye the one and not bothe, ỹ in
ỹ case he that can firste obtaine his iudgemente
againste the executoures shall haue execucion of
the whole and the other shall haue nothinge, but

to

first sued first speded.

to whiche of them hee shall in conscience owe his fauour: the common law teacheth not. D. Therein must bee considered the cause why the Dettes beganne and then hee must after conscyence beare his lawful fauoure to hym that hathe the clereste cause of Det, & if both haue like cause then in conscience hee must beare his fauoure where is most neede and greateste charitie.

S. Maye the executoures in that case delaye that accyon that ys firste taken if it stande not wyth so good conscience to bee payde as another Dett whereof no accion is brought and procure ỳ an action maye bee brought thereof and than to confesse that accion that hee may so haue execucion, and than the executoures to bee dyscharged againste the other. D. Why maye hee not in that case paye the other wythout accyon and so bee discharged in the lawe againste the firste. S. No verelye for after an accion is taken the executour maye not minister the goodes so but that hee leaue so muche as shall pay the Det wherof the accion is taken, and if hee doe hee shall paye it of his owne goods, excepte an other recouer and haue iudgement agaynst him hanging that accō and that wythout couyn.

D. Then to aunswere to thy questyon, I thinke ỳ by delayes that bee lawfull, as by Essoyne, emparlaunce, or by a Dylatorie plee in abatement of the writte that is true, hee may delaye it, but hee may plede no vntrue plee to preferre the other to his duetie. But I praye thee what is the lawe of legacies restitucion & dettes bỹ cōtractz ỳ parcele ought rather after charitie to

Who wasteth the goods of ye testator.

to bee payde then a dett vpon an obligacio̅ what may the fauour of the executour doe in those cases. S. Nothinge for if they eyther perfourme legacies, make restitucions, or pay Dettes vpon contractes and keepe not sufficient to paye Dets whiche they are compellable by the lawe to paye that shalbee taken as a Deuastaucrunt bona testatoris, that is to say, that they haue wasted the good of their testatour, and therefore they shall bee compelled to paye the dettes of theyre owne goodes, and so it is if they paye a dette vppon an obligacion whereof the daye is yet to come thoughe it bee the clearer dette and that bee the more charitie to haue it payed. D. Yet in that case if hee to whome the Dette is already owynge forbeare till after that day of the other obligacion is past, then hee may paye him wythout daunger. S. That is true if there bee no accyon taken vppon it, and though there bee, yet if that accion maye bee delaied by lawfull meanes as thou hast spoken of before: till after the daye and then an accion is taken vpon it then may the executours confesse the accion and then after iudgment hee may pay the det without daunger of ye lawe. D. Is not that confessing of the accion so doone of purpose a couine in the lawe? S.

Couyn

No verelye for couyne is where the accion is vntrewe, and not where the executoures beare a lawfull fauoure. D. The ordinary vppon the accompt in all the cases before rehearsed will regard much what is best for the testatour. S. But hee maye not driue them to accompte against the order of the common lawe.

Accompt.

The

¶ The.ix.question of the Student. for a executor

¶ The.xi.Chapter.

A Man is indetted to an other vppon a simple contract in xx.li and he maketh his will & bequeteth xx.li.to Henry Hart & dyeth,and leaueth goods to his executours only to burye him with, & to performe the saide legacye,and after ỹ sayde executours deliuer the goodes of their testatoure in performance of the saide bequest, whether is he to whome the bequest is made bound in cõscyence to paye the saide Dette vpon the simple contract to the saide Henry Harte or not. D. Is hee not bounde therto by the lawe. S. No verelye. D. And what thinkest thou hee is in conscience. S. I think ỹ he is not bound thereto in conscience, for hee is neither ordinarye administratour, nor executour. And I haue not heard ỹ any man is bound to pay dettes of any man ỹ is deceassed, but he be one of those three, for ỹ goodes ỹ the testatour lefte to ỹ executoures were neuer charged w^t the dett, but ỹ person of the testatour while he liued was onely charged with the det & not his goods and his executours ỹ represent his estate after his death hauing goods therto of the testatours be charged also w^t the dettes and not the goods. And therfore if an executour geeue away or sell all the goods of the testatour or other wise waste them, hee that hath the goods is not charged with the Dettes in lawe nor conscience, but the executours shalbe charged of their owne goods

Will

Executor

ordinary

or

Executor

waste of goods

goodes and in lykewyse if John at Noke owe to A.B. xx.li. And A.B. oweth to C.D. xx.li. & after A. B. dyeth intestate hauinge none other goodes but the sayde. xx.li. which the saide John at Noke oweth hym, yet the saide C.D. shall haue no remedy against the sayde John at Noke for he standeth not charged to hym in lawe nor conscience. But the ordinarie in that case muste commit administracion of the goodes of the sayd A.B. And the saide administratoure must leuye the money of the sayde John at Noke and paye to the sayde C.D. And the saide John at Noke shall not paye it him selfe because he is not charged therewith to him, and no more mee thinketh in this case that hee to whome that bequest ys made is neither charged to hym that the money was owing to in lawe nor conscience.

D. Then shew me thy mynd by what law it is grounded as thou thinkest that executoures bee bounde to pay Dettes before legacies, whether is it by ẏ lawe of God, or by the lawe of reason, or by the lawe of man as thou thinkest.

S. I think that it is both by the lawe of reason and by the lawe of God for reason wyll that they shal do firste that is beste for the testatoure, and that is to paye Dettes ẏ this testatour is bound̄e to paye before legacies that hee is not bound to. And also by the lawe of god they are bound̄ to paye the dets first for sith they are bounden by ẏ lawe of God to loue their neighbour, they are bounde to doe for him ẏ shalbee best for him when they haue take ẏ charge thereto, as executoures doe when they agree to take the charge of that wyll

of

of their testatour vpon them, and it is better for the testatoure that his dettes bee payde: wherefore his soule shall suffer payne: than that his legacies be perfourmed, wherefore he shall suffer no payne for the perfourming of them.

And that is to be vnderstande where the legacy is made of his owne free will & not where it is made as a satisfaccion of any duitie. And after ỹ saying of saincte Gregorye the verye true proofe of loue is the deede. But this man is not in that case, for he tooke neuer the charge vpon hym to paye the Dettes of the testatour. And therefore hee is not bounde to them in lawe nor conscience as mee seemeth. But rather the executors shuld haue ben ware or they had paied the legacies seeing there were dettes to paye. D. The executoures myght none otherwise haue done in thys case but to paye the legacies for them they should haue beene compelled by the lawe to haue payde, and so they coulde not haue beene to haue payed the dette vppon a contracte. And therefore they did well in perfourmynge of that legacye, but he to whome ỹ legacy was made ought not to haue taken them but ought in conscience to haue suffered them to haue gone to the paiment of ỹ Det and sith he did not so but tooke them where hee had no right to them, it seemeth ỹ when he tooke them he tooke wt the charge in conscience to paye the det, for sith the executourz were cõpellable by the law to performe that bequest and not to paye the Det, therefore when they peformed that bequeste, they were discharged thereby agaynste hym that the dette was owynge to, in the lawe

and

and conſcience & then the charge reſted vpō hym
ꝑ tooke the goods where he ought not in cōſcience
to haue taken them, but if it had bene a Det vp-
pon an obligacion or ſuch other Dett wherupon
remedy haue ben hadde againſt the executoures
by the lawe, I there ſuppoſe that though the ex-
ecutours hadde perfourmed the legacye that yet
hee to whome the legacye was made and perfor-
med hadde not been charged in conſcience to the
payment of the Dette for the executoures ſtoode
ſtill charged thereto of their owne goodes and he
to whome the bequeſt was made was only bound
in conſcience to repay that he receiued to ꝑ execu-
tours becauſe hee had no right to haue receiued
it, for againſt the executours hee hadde no righte
therto. S. Than it ſeemeth in this caſe that in
likewiſe hee to whome the beequeſt was made,
ſhoulde repay that he receiued to the executours
and than they to pay it rather then hee. D.
The executours haue no farther medlinge wyth
it as thys caſe is, for whan they perfourmed the
bequeſt they were diſcharged againſt both the o-
ther in lawe and conſcience, and alſo he to whom
the bequeſt was made ſtode not in this caſe charg-
ged to the executours, for againſt them he hadde
good tytle by the lawe, and ſo this charge ſtan-
deth onely againſt him that the Det ys owynge
to, and the ſame law that is in this caſe vppon a
det vppō a cōtracte is if ꝑ teſtatour hadde done a
treſpas whercuppon hee ought to haue made re-
ſtitucion, that is to ſay, that he to whome the be-
queſt is made is bound to make the amendes for
the treſpaſſe, for it ſhould be no diſcharge to hym
to

to pay it againe to the exetutours without they paide it ouer, and it were vncertain to him whether they would pay it or not.

And therefore to be out of peril: it is necessary that he paye it himself and than is he surely discharged against all men.

¶ The.x.question of the Student. Fitzherbert of land

¶ The.xii.Chapter.

A Man seased of certeine land in his demean as of fee hath issue two sonnes and dyeth seysed, after whose death a stranger abateth, & taketh ye profite, and after the eldest sonne dyeth without issue and his brother bringeth an assise of Mortdauncester as sonne and heire to hys father not making mencion of his brother and recouereth ye land with dammages fro the death of hys father as he may well by the law, whether in this case is ye younger brother bounde in conscience to paye to the executoures of the eldest brother the value of the profites of the saide lande that belongeth to the eldest brother in his syse or not. D. What is thyne oppinion therein. S. That syke as the sayde profites belonged of ryghte to the eldeste brother in hys syse, and that he hadde full auctorite to haue released as well the ryghte of ye said lāde as of ye saide pfites whiche release should haue bene a clere barre to ye younger brother for euer. That ye right of the saide damages which

.2. sons
abateth
Exonut
pfite
release

which be in the lawe but a chatell, belong to hys executoures and not to the heire, for no manner of chattell neyther reall nor parsonall shall not after the lawe of the Realme dyscende vnto the heire.

Catoll.

D. Thou saidest in the case nexte before, that it is not of the lawe of reason that a manne shall make executours, and dispose hys goodes by hys will, and that the executoures shal haue the goodes to dispose but by the law of man, and if it be lefte to the termination of the lawe of man.

Exorut.

Than in suche cases as the law geueth such chatelles vnto the executours, they shall haue good right vnto them, and in suche cases as the lawe taketh such chattells from them: they ben rightfully taken frō them. And therefore it is thought by many that if a man sue a writte of right of ward of a warde that he hath by his owne fee and dyeth hanging the writte and his heire sue a resomons according to the statute of westminster secounde and recouereth: that in that case the heire shall enioye the wardshippe againste the executoures, and yet it is but a chatell, and they take the realō to bee because of the saide statute and so myghte it be ordeined by statute that all wardes shoulde goe to the heirs and not to the executoures. Right so in this case sith the lawe is such that the younger brother shall in this case haue an assyse of Mordaūcestre as heire to his father not makīg any mencion of his elder brother and recouer dāmages as well in the tyme of his brother as in his owne time: it appeareth that the lawe geueth the right of these damages to the heire and therefore

right of warde.

westmouth.

mordaūcestre.

damage

fore no recompence ought to be made to the executours as me semeth, and it is not like to a writ of Aiel, where as I haue learned in Latin (sith our first dialogue) the demaundaunt shal recouer damages only for the death of his father, if he ouerliue the Ayel, and the cause is, for the demaūdant though his Aiel ouer liued his father muste of necessitie make his conueiaunce by hys father & must make himselfe son and heire to his father and cosin and heire too his Ayel, & therfore in ỳ case if the father ouer liued the Ayell the abator were boūden in cōscience to restore to the executours of the father the profites ren in his tyme, for no lawe taketh them fro hym, but otherwise in this case as me semeth. S. If the yonger brother in this case had entred into ỳ land & out taking any assise of Mordaūcestor as he might if he would, to whom were the abatour thā boūden to make restituciō for those profites as thou thinkest.

D. to the executours of the eldest brother, for in ỳ case there is no lawe that taketh them fro them, and therfore the generall ground which is that al chatels that go to the executours, holdeth in that case, but in this case that grounde is broken and holdeth not for ỳ reason that I haue made before, for commonly ther is no general grōūd in the lawe so sure, but that it faylethe in some particuler case.

The.xij. question of the student.

The.xij. Chapter

A Man seysed of land in fee taketh a wyfe, and after alieneth the lande and dieth, after whose death his wife asketh her dower and the alienee refuseth to assigne it vnto her, but after shee asketh her dower again, & he assigneth it vnto her, whether is ỹ alienee in this case boūd in cōscience to geue the woman damages for the profites of the lande after her third part fro ỹ deathe of her husbande, or fro the first request of her dower or neither the one nor the other. D. What is the lawe in this case. S. By the lawe the woman shal recouer no damages, for at the common law the demaundaunt in a writ of dower should neuer haue recouered damages. But by the statute of Marton it is ordeined that where the husbād dyeth seysed that ỹ woman shall recouer damages which is vnderstand the profites of the land sith the death of her husband and such damages as she hath by the forbering of it, but in this case the husband died not seised, wherfore she shal recouer no damages by the law. D. yet the lawe is that immediatly after the death of her husbād the wife ought of right to haue her dower if she aske it though her husband dyed not seysed. S. That is true.

Damage in Dower

of seysed Dāages

D. And sith she ought to haue her dower fro the death of her husband it seemeth that she ought in conscience to haue all the profyttes fro the death of her husband though she haue no remedy to come to them by the law, for me thinketh that thys case is like to a case that thou puttest in our first dyalogue in Latin the.xvij. Chapter. That if a tenaūt for terme of life bee dysseysed & dye,

die, and the disseysour dyeth, and his heire entreth and taketh the profits, & after he in the reuersion recouereth the lands against ỹ heire as he ought to doe by the lawe, ỹ in that case he shall recouer no damages by the lawe. And yet thou diddest agree that in that case the heire is bound in conscience to paye the damages to the demaundaunt and so mee thinketh in this case ỹ ỹ feoffe ought in conscience to paye the damages fro the deathe of her husband seeynge ỹ immediatlye after his deathe shee ought to haue her dower. S.

Though she ought to be endowed immediatly after the death of her hūsbād, yet she can lay no default in the feffe til she demaūd her dower vpon the groūd and ỹ the tenant be not there to assignē it or if he be there that he will not assigne it, for he ỹ hath the possession of lande whereunto any woman hath title of dower, hathe good auctoritye, as against her to take the profites till she require her dower for euery womā ỹ demaūdeth dower affirmeth ỹ possession of the tenēt as against her and therefore although she recouer it by acciō she leueth the reuersion alway in him against whom she recouereth though he be a disseysour & byingeth not the reuersion by her recouery to him that hath right as other tenauntes for terme of lyfe doo. And for this reason it is that the tenaunte in a writte of dower, where the husband died seysed if he appeare the first daye, may lay to excuse hymselfe of damages that he is and alwaies hath ben redy to yeld dower if it had been demaūded, & so hee shall not be receiued to do in a writ of cosinage neither in the case ỹ thou remēbrest

wrong doers.

aboue, for in both cases the tenantes be supposed by the writ to be wrong doers, but it is not so in this case, and so me thinketh it clere ꝑ the feoffe in this case shall neither be bound by law nor cõscience to yeld damages for the time ꝑ passed before the request, but for the tyme after ꝑ requeste is greter doubt, howbeit some thinketh hym not there bound to yeld damages because his tytle is good as is saide before and that it is her defaulte that she brought not her accion. D. As vnto the tyme before the request I holde me content with thine opinion so ꝑ he assigne the dower when hee is required, but whã he refuseth to assigne it, thã I thinke him bound in conscyence to yeld damages for both times though he shall none recouer by the law. And first as for the tyme after the refusell, it appeareth euidently ꝑ whan hee denyed to assigne her dower. he did against cõscience, for he did not ꝑ of right to haue done by the law, me as he would should haue beene done to him and so after the request he holdeth her dower fro her wrongfully and ought in conscience to yelde damages therefore. And as to the default that thou assignest in her, that she toke not her action, that forceth title for actions neede not, but wheare the party wyll not do that he ought to doe of ryghte. And for that he ought of righte to haue done and dydde it not, he can take none aduauntage, and than as to the damages before ꝑ request me thinketh him also bounden to pay them, for whan her was required to assigne dower and refused. It appereth ꝑ he neuer intended to yelde dower fro the beginning, & so he is a wrõg doer in his owne consci-

conſcience, and more ouer if the huſband dye ſeyſed, the lawe is ſuch ꝑ if the tenaunt refuſe to aſſigne dower whan he is required wherefore the woman bringeth a writ of dower againſte him, that in ꝑ caſe ꝑ woman ſhal recouer damages as well for the time before the requeſt as after, and yet he ought not in ꝑ caſe after thine opinion to haue yelded any maner of damages if he had ben ready to aſſigne dower whan it was demaunded and ſome thinketh here. S. The cauſe in that caſe that thou haſt put is for that the ſtatute is general that the demaundant ſhal recouer damages wher the huſband dyed ſeyſed, and that ſtatut hath bene alway conſtrued that wher the tenant may not ſay ꝑ he is and hath ben alway redy to yeld dower &c. ꝑ the demaundaunt ſhal recouer damages fro the death of her huſbande.

But in this caſe there is no lawe of the realme ꝑ helpeth for the demaundaunt neyther common lawe nor ſtatute, & furthermore though it might be proued by his refuſel ꝑ he neuer intended fro the death of ꝑ huſband too aſſigne her dower yet ꝑ proueth not, but that hee had good righte too take the profites of her thirde parte for the tyme as well as he had of his owen two partes: till requeſt be made as is afore ſaid and ſome thinketh ꝑ notwithſtāding the denier he is not bounde to yelde damages in this caſe but for the time of ꝑ requeſt and not for the tyme before D. For this time I am codtent with thy reaſon.

¶ The.xij.queſtion of the ſtudent.

The.xiij.Chapter.

fyne

A Man seysed of certaine lands knowinge that another hath good right and title to them leuieth a fine with proclamacion to the intente hee would extinct the ryghte of the other man, & the other man maketh no claime within the .v. yeres whether may he ꝑ leuyed the fine hold the lande in conscience as he may do by the lawe D. By this question it seemeth ꝑ thou doest agree that if hee ꝑ leuieth the fyne had no knowledge of the other mans righte, ꝑ his righte shoulde than bee extincted by the fine in conscience. S. Ye beleyve, for ꝑ diddest shew a reasonable cause whye it should be so in our first dialogue in Latin the xxiij. Chapter, as there appereth. But if he ꝑ leuied a fine and that would extinct the ryghte of another, knowing ꝑ the other had more ryghte than he than I doubt therin for I take thyne opinion in our first dialogue to be vnderstād in cosscience, where he ꝑ would extinct former rights by suche a fine with proclamacion knoweth not of any forme title but for his more suerty if anye such former right bee: he taketh the remedy ꝑ is ordeyned by the lawe. D. Whether doest thou meane in this case that thou puttest now that he ꝑ hathe ryghte, knoweth of the fine and wylfully letteth the .v. yeres passe without claime or ꝑ hee knoweth not any thyng of the fine. S. I pray thee let me know thine opinio in both cases and wheather thou thynke ꝑ hee that hath right be barred in eyther of the cases by conscience as hee is by the lawe or not. D. I wyl with good will hereafter, shew thee my mynd therein: but at this tiue I pray thee geue a litle sparing & proceede

knowledge

wilfully

v. yeres passe.

ende nowe for this time to some other question.

¶ The xiij. question of the student.

The xv. Chapter.

for tenāt by curtesse

A Man seysed of certayne landes in fee hathe a doughter which is his heire apparaunt, the doughter taketh a husbād and they haue issue: ẏ father dyeth seysed, & the husband as sone as hee heareth of hys death goeth towarde the lande to take possession, and before he can come there: his wife dieth, whether ought he to haue the land in conscience for terme of his lyfe as tenaunt by the curtesie because he hath done ẏ in hym was to haue had possessiō in his wiuez life so ẏ he might haue been tenant by the curtesy accordyng to the law, or ẏ he shal neither haue it by the lawe nor conscience. D. It is clearely holden in ẏ lawe that hee shall not bee tenaunt by the curtesye in this case because he had not possession in deede.

possession in deede.

S. Ye verely, and yet vpon a possession in lawe a woman shal haue her dower, but no mā shalbe tenāt by ẏ curtesy of lande wout his wyfe haue possession in ẏ deede.

dower vpon possession in lawe.

D. A man shalbe tenant by the curtesy of a rent though his wife dye before the day of paiment, & in likewise of an aduowsō though she die before the auoidance. S. That is trouth, for the olde custome and maxime of ẏ lawe is ẏ hee shall bee so, but of lād ther is no maxime ẏ seruyth hī but his wyfe haue possessiō in dede. D. And what is the reason that there is suche a Maxime in the

not aduanced.

lawe of the rent & of the aduowson rather than of land, whan the husband doth as much as in him is too haue possession and cannot. S. Some assigne the reasō to be because it is impossible to haue possession in deede of ỹ rent or of aduowson before the day of paiment of the rent, or before ỹ auoidaunce of the aduowson D. And so it is impossible that he shal haue possession in dede of lande if his wife dye so soone that he may not by possibilitie come to to the land after her fathers death, and in her life as the case is. S.

impossible

The lawe is such as I haue shewed thee before & I take ỹ very cause to be for ỹ there is a maxime serueth for the rent and the aduowson, and not for the lands as I haue saide before, and as it is said in ỹ. viij. chapter of our first dyalogue, it is not alway necessary to assigne a reason or cōsideracion why the maxymes of ỹ lawe of Englād were first ordained & admitted for maxymes but it suffiseth that they haue been alwaye taken for lawe and that they be neither contrarye to the law of reason nor to the lawe of god as this maxime is not, and therfore if the husbande in thys case be not holpen by cōsciēce hee cannot bee holpen by the lawe.

D. And if the lawe help him not conscience can not help him in this case, for conscience muste alway be grounded vpon some lawe, and it cannot in this case be groūded vpon ỹ lawe of reason nor vpon ỹ lawe of god, for it is not directly bye those lawes ỹ a man shalbe tenant by the curtesy, but by the custom of the realme. And therfore if ỹ custom help him not, he cā nothing haue in this case by

cōsciēce vpō some law

by conſcience, for cõſcience neuer reſiſteth ẏ lawe of man nor addeth nothinge to it, but where the law of man is in it ſelfe directly againſt the lawe of reaſon or els the lawe of god, and thã properly it cannot be called a lawe but a corruption, or where the generall groundes of the lawe of man worketh in any particuler caſe againſt the ſayde lawes as it may do, and yet the lawe good as it appeareth in diuers places in our fyrſte dyalogue in latin, or els, where ther is no law of man prouided for him that hath right to a thynge by the lawe of reaſon or by the lawe of God. And thã ſometime there is remedy geuen to execute that in conſcience, as by a Sub pena but not in al caſes for ſometime it ſhalbe referred to ẏ conſciẽce of the partie, and vpõ this groũd (that is to ſay) that when there is no title geuen by the common law, that there is no title by conſcience. There be diuers other caſes whereof I ſhall put ſome for an exãple. As if a reuerciõ be graunted vnto one, but there is none attournemẽt, or if a newe rent be grafited by worde without dede: there is no remedy by conſcience onleſſe the ſaid graunts were made vpõ conſideracion of money or ſuche other. And in likewiſe wher hee ẏ is ſeyſed of ladꝫ in fee ſimple maketh a wil therof, that wil is voide in cõſciẽce be cauſe ẏ groũd ſerueth not for him wherby the conſcience ſhould take effecte, ẏ is to ſay, the law, and if the tenant make a feoffement of the lande that he holdeth by priority and taketh eſtate agayne & dyeth (his heire within age) the lord of whom the land was firſt holden by priorite ſhal haue no remedy for the body by conſci-

corruptiõ
reuerſion
attornmẽt
wordes not
will
feffmẽt
priority
infant

altered conscience, for the lawe þ first was with him, is now against him, and therefore conscience is altered in likewise as the law altereth, and diuers and many cases like be in the law þ were to long to rehearse now. And thus me thinketh þ if the law be as thou saist: the husbād in this case hath neither right by the law nor conscience.

¶ The.xiiij. question of the student.

The.xvi. Chapter.

Rent is graūted to a mā in fee to perceyue of two acres of land, & after the grauntoure enfeoffeth the graūtee of one of þ said acres, whether is the whole rent extinct therby in conscīēce as it is in the lawe. D. Thys case is somwhat vncertaine, for it appeareth not whether þ graūtour enfeoffed him on truste, or þ hee gaue the acre to him of his mere mocion too the vse of the said feoffe, or els þ the feffement was made vpō a bargaine, & if it were but onely a feoffement of truste, thā I think þ whole rent abideth in conscience though it be extincted in the law, & firste þ it continueth in þ case in conscience. for þ parte þ the grauntee hath to þ vse of þ grauntour, it is euident for he may not take þ profites of þ lande & it is against conscīēce þ hee shoulde lese both, & in likewise it abideth in cōscience for the acre þ remaineth in þ handes of þ graūtor though it be extincte in the law for ther was a defawlt in the grauntour þ hee would make þ feoffement too þ graūtee as wel as there was in þ graūtee to take

&

te. And it is no conſcience that of his owñ defaut he ſhould take ſo gret auaile to be diſcharged of ẏ whole rent, ſeing ẏ the feoffeinent were made to his owne vſe. And if ẏ feoffement was made vpō a bargain & a contract betwene thē, thā it is to ſee whether they remēbred ẏ rent in their bargain, or ẏ they rembred it not, and if they remēbred it in theire bargain and contract, than conſcience muſt folow the bargaine as thus if theye agreed ẏ the graunte ſhould haue the rent after the porcion in the other acre then by cōſcience he ought to haue it though it be extincted in ẏ lawe. And if they agreed ẏ the whole rent ſhould be extinct and made theire price accordinge than it is extinct in law and conſcience, and if they clerely forgeat it and made no mencion of it, or for lacke of cunninge toke the lawe to be ẏ it ſhoulde continue in the other acre after the porcion & made their price accoꝛding, pondering onely the value of the acre ẏ was ſold: than me thinketh, it doth continue in conſcience after the porcion, & if the feoffement were made to the vſe of the graunte, then it ſemeth ẏ whole rent is extinct in law and conſcience. S. Than take that to bee the caſe ẏ is to ſay that the feoffement was made to the vſe of the grauntee. D. What is thā thine opinion therein.

S. That the rent ſhoulde abide in conſcyence after the porcion for the acre remaineth in the hādꝛ of the grauntour notwithſtanding it bee extincte in the lawe. Doctour. Then ſhew me thine opinion in this ẏ I ſhall aſke thee. Of what law is it ẏ grauntes of rente and of ſuche other

por-

wote Pfite

profits out of landes may be made and that they shal be good and effectual to the grauntes, whether is it by the lawe of reason or by the lawe of God or by the custome and law of the realme. S I thinke it is by the law of reason, for by ꝑ sāe reason that a man may geue away all his landes he may as it seemeth geue away the profits thereof or graunt a rent out of the land if he wil. D. But than by what law is it ꝑ a man may geeue away his landes, I trow by none other law but by the custome of the realme, for by statut al alienacions and gifts of lands may be prohibite, and than that reason proueth not that graunts of ꝑ profits of lād or of a rent should be good because he may alien the land, if alienations of lād bee by custome and not by the lawe of reason as I suppose it is, wherof I touched somwhat in our first dialogue in Latin the xix. Chapter. And also yf grants should haue their effect by the law of reason, than reason would that they should bee good by the onely worde of the graūtour as wel as by his dede, and that is not so, for without deede ꝑ grant of rent is void in the law and so me thinketh that graunts haue their effect onely by the lawe of the realme. S (Admit it to bee so) what meanest thou thereby. D. I shall shew thee hereafter as I shal shew thee the cause why I think the rent is extinct in conscience as well as in law. And first as I take it the reason why it is extinct in the law is because the rent by the first grant was goyng out of both acres, & was not goinge part out of the one acre and part oute of the other, but the whole rent was goinge out

Lands

wnt extinct

of

of both, and than when the graunte of his owne
foly will take estate in the one acre whereby that
acre is discharged, then ỹ other acre also must be
discharged onles it should be appoꝛcioned and ỹ
law will not that any appoꝛcionment shoulde be
in ỹ case, but rather in asmuch as the party hath
by his owne acte discharged the one acre: ỹ law
dischargeth also the other, rather then to suffer
the other acre to be charged contrary to ỹ forme
of the graunte foꝛ this rent beginneth all by the
act of the party and as I haue heard is called a
rent against common righte, whereforꝛe it is not
fauoured in the law as a rent seruice is, and thē
me thynketh that foꝛ asmuch as it is not groun-
ded by the law of reason that grauntes of rente
shoold be made out of land, but by the customes &
law of the realme as I haue saide beforꝛe, that so
in likewise it remaineth to the law and custome
of the realme to determine how long suth rentes
shal continue. And whan the lawe iudgeth suche
rentes to be voide: I suppose that so doth consci-
ence also, except the iudgement of the lawe bee a-
gainste the law of reason oꝛ the lawe of God, as
it is not in this case, foꝛ in this case hee ỹ taketh
the feoffement hath pꝛofyt by the feoffement and
knoweth that he hath such a rent out of the lād,
and that his purchase should extincte it, wherby
it appeareth that hee assenteth vnto the lawe
whereto hee was not compelled, and that is his
owne act and his owne default so to doo, whiche
shal extinct his whole rent as well in conscyence
as in the lawe. But if hee haue no pꝛofite of
the lande oꝛ bee ignoꝛaunt that hee hath suche a
rent

folz
apꝛoꝛcio
act of ỹ
comō right
not fruit
ỹ fruit
rent
extinct
ignorat
no fit.

Ignorance { of the deed. of the law.

rent out of the land whiche is called ignorauncē of the deede, or if he bee ignorant that the lawe wold extinct his whole rēt thereby which is called ignorauncē of the law, than me thinketh it remayneth in concience after the porcyon. S. Ignorance of the lawe or of the dede helpeth not but in fewe cases in the lawe of England. D. And therfore it must be reformed by conscience that is to saye by the lawe of reason for whan the generall maxtimes of the lawe be in any particuler cases against the lawe of reasō as this maxtime seemeth to be because it excepteth not thē ỹ be ignorāt though it be an ignorāce inuincible thā doth it not agree wt the lawe of reason. S. Myne thinketh that ignorance in this case helpeth litle, for whē a man bieth any land or taketh it of the gift of any other hee taketh it at his peril, so that if the title be not good: ignorauncē cannot helpe, for the byer must beware what he byeth, and so in thys case if the taking of the one acre should extinct ỹ whole rent in conscience if hee were not ignorāt so me thinketh it should in likewise extinct it also though he be ignorant of the lawe or of ỹ deede for euery mā must be compelled to take notice of his owen title: and out of what lād his rent is going and so me thinketh ignorance is but litle to be considered in this case.

bieth of lands.

extinct

D. If a man bye land or take it of the gyfte of another: it is reason that he take it with the peril though he bee ignorant that another hathe ryght, for it were not standing with reason that his ignorauncē should extynct the ryght of another, but in this case there is no dout of the right

at his peril

of

of the lande, but all the dout is how the rent shall be ordred in conscience if hee ỹ hath the rent taks part of the land, and therin is great diuersity betwene him ỹ is ignorannt in the lawe, and hym that knoweth the lawe, and knoweth well also ỹ he hath a rent out of that lande and other. For I put case that he asked counsaile of the graūtour himselfe therin and he saying as he thought tolde him that the takynge of the one acre should not extinct the rent but for the porcion, and so hee thinking the law to be, toke the other acre of hys gift. It is not reasonable in ỹ case that, ỹ ignorannce should saue the rent in conscience.

S. yes, for ther the grauntour himselfe is partye to his ignorannce and is in manner the cause therof. D. And me thynketh al is one if anye other had shewed him so, or if he asked no counsaile at al, for me thinketh it suffiseth in this case that hee be ignorannte of the lawe, for why, it is more hard in this case to proue ỹ rent should bee extinct in conscience though he knowe it shoulde be extinct in the lawe, thā to proue ỹ it cōtinueth in conscience after the porcion yf he be ignorant, and thou thy selfe were of the same opinion as it appeareth in the beginning of this yerset Chapter, but if that opinio were true, it would be hard to proue but that the saide general maxime were wholy against reason, & than it were voide, but I haue sufficiently answered thereto as me seemeth, and that it is extincte in the lawe and also in conscience, except ignorāce help it to be apporcioned. And moreouer forasmuch as apporcionment is suffred in the lawe where part of the land discen-

rent

to poll

extinct

apporti
oned.

Defaulte

dyscendeth to the graunt because no defaulte can be assigned in him some thinketh no defaulte can bee assigned in him in conscience whan he is ignorant of the law or of the dede though suche ignorance do not excuse in the lawe of the realme. S. I am content wyth thine oppynion in thys behalfe at this tyme.

¶ The.xv. question of the student.

rent grauted

The.xvij. Chapter.

rent

A Man graunteth a rent charge out of two acres of lande, and after the grauntour enfeoffeth Henry Harte in one of the said two acres to the vse of the said Henry Hart and of his heires and after the said Henry Hartt entending to extinct al the rent causeth the said acre to be recouered against him to his owne vse in a writ of entre in the post in the name of the graunte and of other after the common course, the graunte not knowing of it, and by force of the said recouery the other demaūdants entre and dye, liuyng the graunt, so that the graūtor is seised of all by the surueiour to the vse of the sayde Henrye Hart; whether is the sayde rente extincte in conscience in part or in all or in no part? D. I am in dout of the lawe in this case. S. In what poynte. D. whether ẏ whole rēt be goīg out of ẏ acre that remaineth in ẏ hands of ẏ grātor because ẏ graunte cōmeth to ẏ lād by wai of recouery, or ẏ it shalbe extinct in ẏ law, but after the porcion because the grāte hath not the acre to his own vse or that ẏ whole

whole rent shalbe extinct in the lawe. S.
The rent cannot be whole going out of the acre
that the grauntour hath, for this recouerye is vpō
a false title and the grauntour because hee ys
straunge to it shalbee well receiued to falsifie it. falsify
But if the recouerie hadde ben vpon a true title:
than it had bene as thou saiest, for if the graunte
recouer the one acre against the grauntour vpō
a true title, the grauntoure shall paye the whole
reyhoist of that larum, that remaineth in his hand
as to the vse it maketh no matter to the grau- Extinct
tourees to the lawe in whome the vse bee, for the vse
possession. Mary the vse extinguisheth the whole
rent ouragainst them in the lawe as well as if the
possession and vse were bothe ioined together in
the grauntee. D. Than mee thinketh that the
lay de whom ye harte is bounden in conscience to
paye the grauntee the rente after the portion of
thacre that was recouered, for it cannot stand
with conscience that hee should lose his rent and
haue no profites of the lande. S. Than of whom
shall hee haue the other porcion of his rent?
D. Is the lawe so cleare that the acre that the
grauntour hath shalbe in this case discharged in
the lawe? S. I take the lawe so.
D. And what in Conscience? S. As against
the grauntour mee thinketh also it is extincte in
conscience for the reason that thou haste made
in the. xvii. chapter for it is all one in conscience
in this case as againste the grauntoure whether
the recouerye were to the vse of the grauntee or
not specially seeyng that the grauntoure is not
priuy to the recouery, for the vnitie of possession priuy
vnitie

M.i. is

vnitie of possession semple extinct

is the cause of extinguishment of the rent against the grauntour bothe in lawe & conscience where so euer the vse be but if the grauntour had beene priue to the cause of the extinguishement as hee was in the case that I putt in the laste Chapter where the grauntour enfeoffed the grauntee, of one of the acres to the vse of the grauntee, there it is not extincte in conscience in that acre that remaineth in the handes of the grauntour thoughe it be extincted in the lawe, because hee was priuie to the extinguishement him selfe, but hee ys not so in this case, & therefore it is extinct against him in lawe & conscience. And therfore me thinketh that the grauntee shall in conscyence haue the whole rente of the saide Henrye Harte that caused ỹ sayde recouery to be hadde in his name, for in him was all the default, but it is to be vnderstande that in all the cases where it is sayde before in this chapter or in the chapter next before that the rent is extincte in the lawe and not in conscience, that in suche case all the remedyes that the party might firste haue had for the rents at the common lawe by distresse assyse or otherwyse are determined, and the partye that oughte to haue the rente in conscience shalbee driuen to sue for his remedy by Subpena. D. I am content wt thy conceit in this matter for this tyme.

¶ The. xvi. question of the Student. for lād assyse

¶ The. xviii. Chapter.

A Villayne is graunted to a manne for terme of lyfe, the villeine pourchaseth landes to hym & to his heires, the tenant for terme of lyfe entreth in this case by the lawe hee shall enioy the lands to him and to his heires, whether shall hee doe so in likewise in conscience. villein

D. Me thinketh it first good to see whether it maye stande with conscience that one manne maye claime an other to be his villeine, and that he maye take from him his landes and goodes, and put his bodye in prison if hee will, it semeth hee loueth not his neighboure as him selfe that doth so to hym.

S. That lawe hath bene so long vsed in this realme and in other also, and hath beene admytted so longe in the lawes of thys realme, and of diuers other lawes also and hath beene affirmed by Byshops, Abbots, Priors, and manye other men bothe spirituall and temporall whiche haue taken aduauntage by the saide lawe, and haue sealed the Landes and goodes of theire villeines thereby, and call it theire right enheritaunce so to doe, that I thynke it not good nowe to make a doubte ne to putte it in argumente whether yt stande with conscyence or not, and therefore I pray thee, admyttinge the lawe in that behalf to stande in conscyence shewe mee thine opinion in the question that I haue made. D. Is the lawe cleare that hee that hathe the villeyne but onelye for the terme of lyfe shall haue the landes that that villeyn purchaseth in fee to him and to hys heyres. S. Ye verelye I take it so. D. I should haue take the law otherwise, for if a seig-

Seignorie

nory bee graunted to manne for terme of life and
Attorn
the tenaunt attourne, and after the lande eschete
Estat
& tenaunt for terme of life entreth, hee shal haue
there none other estate in the lande then he hadde
in the seignory, and mee thinketh that it shoulde
be like lawe in this case, and ỹ the Lorde ought
to haue in the lande but suche estate as hee hath
in the villeine. ¶. The cases bee not lyke, for in
Land place of Signiory
ỹ case of the eschete the tenaunt for terme of lyfe
of the seignourye hath the lands in the lieu of the
seignourie, that is to saye, in the place of the sei-
gnourye and the seignourye is clearelye extinete
Extinct
but in this case hee hath not the lande in ỹ lieu
of the villeyne, for hee shal haue the villein styll,
as he had before, but he hath the landes as a pro-
fite come by meanes of the villeine whyche hee
shall haue in lyke case as the villeine had them ỹ
is to saye, of all goodes and cattels hee shal haue
the whole property & of a lease for terme of yeres
hee shall haue ỹ whole terme, & for terme of lyfe
he shall haue the same estate, the lorde shal haue
the lande during the lyfe of the villeyne and of
lande in fee simple, and of an estate tayle that the
villeine hath, the Lorde shall haue the whole fee
simple, although hee had the villeine but onelye
Seisen
for terme of yeares, so that hee enter or sease ac-
cordinge to the lawe before the villeine alien, or
elis hee shall haue nothing.

¶. Verelye and if the lawe be so, I thinke con-
science folowith the lawe therein, for admitting
that a manne may with conscience haue another
manne to bee his villeine, the iudgement of the
lawe in this case as to termyne what estate the

Lorde

Lorde hath in the land by his entre is neyther a-
gainst the lawe of reason nor against the law of
God, and therefore conscience must folowe the
law of the realme, but I pray the let me make a
little digression to heare thine opinion in another
case somewhat partayninge to the question, and
it is this, if an executour haue a villeine, that his
testatour had for terme of yeares, and he purcha-
seth landes in fee and the executour entreth into
the lande, what estate hath hee by entre.
S. A fee simple but that shalbee to the behoue
of the testatour and shalbee an assette in his han-
des. D. Well then I am content with thy cō
ceite at thys tyme in thys case and I praye thee
proceede to another question. S. For asmuche
as it appeareth in this case and in some other be-
fore that the knowledge of the law of Englande
is right necessary for the good orderinge of con-
science I would heare thine opinion if a mā mi-
stake the lawe what daunger it is in conscience
for the mistakinge of it. D. I praye thee putt
some case in certayne thereof that thou doubteste
in, and I will wyth good will shewe thee my
mynde therein, for it els will be somewhat longe
or it can bee plainelye declared, and I
woulde not be tedious in
this writing.

¶ The xvii. question of the
Student.

The.xix.Chapter.

villeine A Man hath a villeine for tearme of lyfe, the villeine purchaseth landes in fee as in the case of the laste Chapter and the tenaunt for tearme of lyfe entreth, and after the villeine dieth hee in the reuersion pretendinge that the tenaunte for terme of life hath nothinge in the lande but for tearme of life of the villeine, asketh counsaile of one that sheweth him that hee hath good ryghte to the lande, and that hee maye lawfullye enter and thorough that counsaile hee in the reuersion entreth by reason of the which entre great sutes and expenses followe in the lawe to the greate hurte of bothe parties, what daunger is thys to hym that gaue the counsaile. D. Whether meanest thou that hee that gaue the counsayle gaue it wittinglye againste the lawe, or that hee was ignoraunt of the lawe. S. That hee was ignoraunt of the lawe for if hee knewe the lawe and gaue counsaile to the contrary I thinke him bounde to restitucion both to him against whom he gaue the counsaile, and also to his clyent if he woulde not haue sued but for his counsaile of all that they bee dampnified by it.

D. Then wyll I yet further aske thee thys question whether he of whome he aske counsayle gaue himselfe to learninge & to haue knowledge of the law after his capacitie, or that hee tooke vppon him to geue counsaile, and toke no studye competent to haue learninge, for if hee did so I think he be bounden in Conscience to restitucio of all the costes & damages that hee sustained to whome hee gaue counsaile if he woulde not haue sued but thorough his counsaile. And also to the

other

other party, but if a manne that hath taken sufficient studye in the lawe, mistake the law in some point that is harde to come to the knowledge of, he is not bounden to such restitucion, for he hath done that in him is, but if such a man knowinge the lawe give counsaile against the lawe: hee ys bound in conscience to restitucion of costes and dammages as thou hast saide before, and also to make amendes for the vntrouth.

S. What if hee aske counsaile of one that he knoweth is not learned, and he geueth him counsaile in this case to enter by force whereof he entreth. D. Then bee they bothe bounde in conscyence to restitucion, that is to saye, the party if he be sufficient, and els the counsayour because hee assented and gaue counsaile to the wrong.

S. But what is the counsailoure in ỹ case bounden to him that he gaue counsaile to.

D. To nothing for there was as much default in him that asked the counsayle as in hym ỹ gaue it, for hee asked counsaile of him that hee knewe was ignoraunte, and in the other was default for the presumpcion that hee wolde take vpon him to geue counsaile in that hee was ignoraunt in. S. But what if hee that gaue the counsaile knew not but that he that asked it, had trust in him that hee coulde and wolde geeue him good counsaile and that hee asked counsayle for to order well his conscience howe bee it that the truthe was that hee coulde not so doo. D. Than is hee that gaue the counsayle bounden to offer to the other amendes, but yet the other may not take it in conscience. S.

That were somewhat perilous for happly hee
would take it though he haue no right to it, ex-
cept the worlde bee well amended. D. What
thinkest thou in that amendement. S. I trust
euery man will doe nowe in this worlde as they
would: be doone to, speake as they think; restore
where they haue done wronge, refuse money yt
they haue no right to it though it be offred them,
doe that they ought for to doe by conscyence,
though that they cannot bee compelled to yt by
no lawe and that none will giue counsayle but yt
they shall thinke to bee accordinge to conscience,
and if they do to do that they can to refourme it,
and not to entermitt them selfe with such matters
as they bee ignorant in, but in such cases to send
them that aske the counsaile to other yt they shal
thinke bee more cunning then they are.

D. It were verye well if it were as thou hast
sayde but the more pitye is, it is not alwaye so,
and specially there is greate defaulte in geuers
of counsayle for some for theire owne lucre and
profite, geeue counsaile to comforte other to sue
that they knowe haue no right, but I trust there
be but fewe of them, and some for dreade, some
for kindred, some for malyce, and some vpon con-
siderations & to haue as much done for them an
other tyme to hyde the trouth. And some take
vpon them to geue counsaile in that they bee ig-
norant in, and yet when they knowe the trouthe,
will not withdrawe that they haue misdone, for
they thinke it should be greatly to their rebuke,
and such persones folowe not this counsaile that
sayeth. (That we haue vnadvisedly done: let vs

with good aduyse reuoke agayne.) S. And if a manne geue counsayle in this realme after as his learning and conscience geueth him, & regardeth not the lawes of the realme, geueth he good cou-saile? D. If the lawe of the realme bee not in ꝑ case against the lawe of god nor against the lawe of reason he geueth not good counsaile for euery man is bounde to folowe ꝑ lawe of the countrey where he is so it bee not against the sayde lawes & so may the cases be ꝑ he may binde himselfe to restitucion. S. At this tyme I will no further trouble thee in this question.

Consel

restitucio

¶ The.xviii.question of the Sudent.

The.xx.Chapter.

Conditio

IF a mann of his meere mocion geue landes to Henry Harte and to his heires by Indenture vpon condicion that hee shall yerely at a certaine day pay to John at Style out of the same lande a certaine rent, and if he do not ꝑ then it shalbee lawful to the saide John at Style to enter &c. if the rente in this case bee not payed to John at Style, whether maye the sayde John at Style enter into the landes by conscyence thoughe hee maye not enter by the lawe. D. Maye hee not enter in this case by the lawe, sith the wordes of the indenture bee that hee shall enter. S. No verelye for there is an auncient maxime in the lawe that no man shall take aduauntage of a condicion but he ꝑ is party or priue to the condicion; and this manne is not partye nor priue

rent

enter

Condicio

ꝑ priuie

where

advãtag Wherefore he shal haue none aduauntage of it.
D. Though hee can haue none aduauntage of ꝑ as partye yet because it appeareth euidently that
Entent the intent of the geuer was, that if hee were not payde of the rent that he should haue the lande.
It semeth that in conscience he ought to haue it though he cannot haue it by the lawe. D.
In many cases the entent of the partye is voyde to all intents if it bee not grounded accordinge to the lawe. And therefore if a man make a leale to another for terme of life, & after of his mere mo-
Remẽ- cion hee confirmeth his estate for tearme of lyfe
der to remayne after his death to an other and to his heires, in this case that remaynder is voyde in lawe and conscience, for by the lawe there can no remaynder depende vppon no estate but that the same estate beginneth at the same tyme that the
Cõfirmãs remainder dothe, and in this case the estate beganne before and the confirmacion enlarged not his estate nor gaue him no newe estate, but if a leale bee made to a manne for tearme of another mannes life, and after the lessoure oneiye of hys
mere motion mere mocion confirmeth the lande to hys lessee for tearme of his owne lyfe, the remainder ouer in fee, this is a good remainder in the lawe and conscience, and so mee thinketh the intent of the partye shall not bee regarded in this case. D.
And in the firste case that thou hast put, me thinketh thoughe it passe not by waye of graunte of
Argũ against graũton that yet it shall passe as by ꝑ waye of remainder of the reuercio̅, for euery dede shalbe taken moste strong against the grauntour & the taking of the dede in this case is an attournament in it selfe.
D.

Attornment

S. That cannot bee, for hee in the remainder is not party to ỹ dede and therefore it cannot be taken by way of graũt of the reuercio, for no grãt can be made but to him ỹ is partye to the deede except it be by waye of remainder, & therfore if a manne make a leafe for terme of life, and after the leffour graunt to a ſtranger that the tenaunt for terme of lyfe ſhall haue the lande to hym and to his heires, that graunt is voide if it bee made onelye of his mere mocion without recompence. And in likewiſe if a man make a leaſe for terme of life, and after graunt the reuercion to one for terme of life, the remaynder ouer in fee, and the tenaunt attourneth to him that hath the eſtate for terme of life only entending ỹ he only ſhould haue aduantage of the grant his entent is voide, and both ſhal take aduantage therof, and the attournement ſhalbee taken good accoꝛding to the graunt, and ſo in this caſe thoughe the feoffoure entended that if the rent were not payde: that the ſtraunger ſhould enter, yet becauſe the lawe geueth him no entre in the caſe ỹ intent is voyde and the ſame ſtraunger ſhall neither enter into ỹ lande by lawe noꝛ conſcience. D. What ſhall then be doone with that lande as thou thynkeſt after the condicion broken. S. I thinke that the feoffour in this caſe maye lawfullye reenter, for when the feoffement was made vpon condicion ỹ the feoffe ſhoulde paye a rent to a ſtraunger, in thoſe woꝛdes is concluded in ỹ lawe ỹ if the rẽt were not payde to the ſtranger that the feoffoure ſhould reẽter for thoſe woꝛds vpon cõdicio, implyeth ſo much ī the law though it be not expreſſed.

And

And than when the feoffour went further & said ꝑ if the rent were not payde that the straunger shoulde enter, those wordes were voide in ꝑ lawe. and so the effect of the dede stode vppon the firste wordes wherby the feoffour may reenter in lawe & conscience but if the first wordes had not bene cõditionel I would haue holde it ꝑ greter dout.

first wordes

Codiro

D. I pray thee put the case thereof in certaine & such wordes as be not condicionell that I maye the better perceiue what thou meanest therin.

The .xix. question of the Sudent.

The .xxi. Chapter.

A Man maketh a feoffemẽt by dede indented, & by the same deede it is agreede that ꝑ feoffee shal pay to .A.B. & to his heirs a certein rẽt yere ly at certaine daies, and ꝑ if hee paye not the rent then it is agreed ꝑ .A.B. or his heires shal enter into the land, & after the feoffe payeth not ꝑ rent then the question is who ought in conscience to haue thys lande and rente. D. Or wee argue what conscience wyll, let vs knowe firste what the lawe will therein. S. I thynke that by the lawe neither the feoffour ne yet the sayde .A.B shal neuer enter into the lande in this case for not payment of the rent for there is no reẽter in this case geuẽ to the feoffor for not paymẽt of the rẽt as there is in the case next before, and the entre ꝑ is geuen to the saide .A.B. for not paimẽt therof is voide in the lawe because hee is estraunge to

wont

Enter

Entet voide

straunger

the

the dede as it appeareth also in the nexte chapter before. And therfore mee thinketh that the greatest doubte in this case is to see to what vse thys feoffement shalbee taken.

D. There appeareth in this case as thou hast put it, no consideracion ne recompence geeuen to the feoffour, whereupon any vse may be demaunded and if the case be so in dede and that the feoffoure declared neuer his mynde therein, to what vse shal it than bee taken.

S. I thinke it shalbee taken to bee to the vse of the feoffe as long as he payeth ẏ rent, for there is no reason why the feoffe should bee busied wyth payment of the rent hauinge nothing for hys labour ne it may not conuenientlỹ be taken ẏ the intent of the feoffour was so, excepte he expressed it, and than it must bee taken hee that entended to recompence the feoffe for the busines that hee shoulde haue in the payement ouer, and by the woordes folowinge his entent appeareth to be so as me thinketh, for if the rent were not payed he woulde that A. B. shoulde enter, & so it seemeth hee entended not to haue anye vse him selfe and thus as me seemeth this case shoulde vary fro ẏ common case of vses, ẏ is to saye, if a mā seased of lande make a feoffement therof: & it appeareth not to what vse the feffement was made ne it is not vpon any bargaine or other recompence, thē it shalbe taken to be to the vse of the feoffour except ẏ cōtrary can be proued by some bargain or other lyke, or ẏ his entent at the tyme of ẏ liuery of seasen was expressed that it should bee to the vse of the feoffee or of some other, and than yt shal

shal goe accordinge to his entent, but in this case me thinketh it shalbee taken that his entent was ꝑ it should first be to the vse of the feoffee for the cause before rehearsed except the contrary canne be proued, and so the knowledge of the entent of the feoffoure is the greatest certaine for knowledge of the vse in this case as mee seemeth, but when the feoffour goeth further and sayeth that if the rent bee not payde: then the saide I. W. should enter into the land, then it appeareth that his entent was that the rent should cease, and ꝑ I. W. should enter into the lande, and though he may not by those wordes enter into ꝑ land after the rules of the lawe, and to haue freeholde yet those woordes seeme to bee sufficient to proove that the entent of the feoffour was ꝑ hee shoulde haue the vse of the lande, for sith he had the rente to his owne vse, and not to the vse of the feoffour, so it seemeth hee shall haue the vse of ꝑ land that is assigned to him for that payement of the rente. D. But I am somewhat in doubte whether hee hadde that rent to his owne vse, for the intent of the feoffour might bee that hee shoulde pay the rent for him to some other or some other vse might be appointed therof by the feoffour.

S. If such an entent can be proued: than ꝑ intēt must be obserued, but we be in the case to weete to what vse it shalbee taken if the entente of the feoffour can not be proued, & than me thinketh it cannot be otherwise taken, but that it shalbee to the vse of hym to whome it should bee paied, for thoughe it be called a rente, yet it is no rente in the lawe, ne in the lawe hee shall neuer haue re-

me-

medy for it, thoughe it were assigned to hym and to his heires without condicion, neyther by dy= 1
strelle, by assise, by writ of annuitie, nor other= 2
wise but he shalbe driuen to sue in the chauncery for his remedy, & then when hee sueth in ỹ chan= 3
cery he must surmit ỹ he ought to haue it by cō=
science, and ỹ he can haue no remedy for it in the lawe. And then sith hee hath no remedy to come to it but by the waye of conscience it seemeth yt shalbe taken that when he hath recouered it that he ought to haue in conscience and ỹ to his owne vse without the contrarye can be proued, and if the contrary canne bee proued: and that the entente of the feoffour was that hee shoulde dispose it for him as he should appoint than hath hee the rente in vse to another vse, and so one vse shoulde bee depending vpon another vse, whiche is seldome sene and shal not be intended til it be proued, and so sith no such matter is here expressed: me thin= ketb the rent shalbe taken to be to the vse of him that it is paied to, and the lande in likewise that it is appointed to him for no payment of ỹ sayde rent shalbee also to his vse, howe thinkest thou will conscience therein.

D. I thynke that as thou takest the lawe nowe that conscience (in this case) and the lawe be al one, for the lawe sercheth the same thynge in this case to knowe the case that Conscyence doth, that is to saye, the entente of the feoffoure and therefore I would moue thee further in one thinge. S. What is that. D. That sithe the entent of the feoffour, shalbee so muche regarded in this case: whye it oughte not also

to

to bee as muche regarded in the case that is in ỹ last Chapter next before this where the woordes be condicionall, and geeue the feoffour a tytle reentre, for mee thinketh that though the feoffour may in that case reenter for the condicion broken that yet after his reentre hee shall be seased of ỹ lande after his entre to the vse of him to whome the lande was assigned by the said indenture for lacke of payement of the rent because the intente of the feoffour shalbee taken to be so in that case, aswell as in this. And I pray thee let me knowe thy mynde what diuersitie thou puttest betweene them. S. Thou dryuest mee nowe to a narrowe diuersitie, but yet I will aunswere thee therein as well as I can. D. But first er thou shewe me that diuersitie: I praye thee shewe me howe vses began and why so much lande hath beene put in vse in this realme as hath beene. S. I wil with good wil saye as me thinketh therein.

assigned

How vses of lande first began and by what lawe & the cause why so much lande is put in vse.

The .xxii. Chapter.

VSes were reserued by a secondarye conclusion of the lawe of reason in this maner, when the generall custome of propertye, wherby euery manne knewe his own good fro his neighbours was brought in among the people. It folowed of reason that suche landes and goodes as manne hadde, ought not to bee taken fro him but by hys assente

vses

Gordian

ypsis

assent or by order of a law, and than sith it is so þ euery man þ hath lands hath thereby two thynges in him, þ is to say, the possession of the lande whith after þ law of England is called þ frank tenement or þ free holde, & the other is auctho̅rite to take thereby þ profites of þ lande, wherefore it followeth þ he þ hath lande and intendeth to geue onely þ possession and freeholde thereof to another and to keepe the profites to hymselfe oughte in reason and conscience to haue the profites seeyng there is no lawe made to prohibyte, but þ in conscience suche reseruacion maye bee made. And so whan a man make a feoffement to another and intendethe þ hee hym selfe shall take the profites than þ selfe is sayd seised to his vse þ so enfeoffed him, þ is to saye, to þ vse þ hee shall haue the possession and freeholde thereof as in the law to the intent þ the feoffour shall take the profytes, & vnder this manner as I suppose vses of lande firste begamne. D. It seemethe that the reseruing of such vse is prohibite by the lawe, for if a manne make feoffement and reserue the profites or any partes of the profite as þ grasse, woode or suche other, that reseruacio̅ is voide in the lawe, and me thinketh it is al one to saye that the lawe iudgeth such a thyng yt yt be done to bee voide, & þ the lawe prohibiteth that the thing shal not bee done. S. Trouth it is þ such reseruacion is voide in þ law as thou saist & that is by reason of a maxime in þ law that willeth that such reseruacio̅ of part of þ same thynge shalbe iudged void in þ law, but yet þ law doth not prohibit that no such reseruacion shalbe made

offendeth no lawe

but if it be made it iudgeth of what effect it shal bee that is to saye, that it shall bee voide and so hee ꝑ maketh suche reseruacion offendeth no law thereby, ne breaketh no lawe thereby, and therefore ꝑ reseruacion in conscience is good but yf it were prohibite by statute ꝑ no man should make suche reseruacyon ne that no feffement of truste should bee made but ꝑ all feffements shoulde bee to ꝑ vse of him to whom possession of the land is geuen than the reseruacion of such vses againste the statut should be void because it were against the lawe and yet such a statute shoulde not bee a statut agai. reasō because such vses were fyrst grounded and reserued by the lawe of reason, but it should preuent ꝑ law of reason and should put away ꝑ cōsideracion wherupon ꝑ law of reason was grounded before the statute made. And than to ꝑ other questiō, ꝑ is to say, why so much lande hath beene put in vse, it will bee somewhat long and paraduenture to some tedious to shewe al the causes particularly, but ꝑ very cause why ꝑ vse remained to ꝑ feoffe notwithstandinge hys owne feoffement or fine and sometime notwythstanding a recouery against him is all vppon one cōsideracion after the cause and entent of ꝑ gift, fine or recouery, as is aforesaid. D. Though reason may serue ꝑ vpon a feffemēt a vse may be reserued to ꝑ feoffour by ꝑ intent of the feoffoure againste ꝑ forme of his gifte as thou hast sayde before, yet I maruaile howe suche an vse may be reserued againste a fine ꝑ is one of the highest recordes that is in the lawe, and is taken in the lawe of so hyghe effecte that it shoulde make an

end

ende of all strifes, or againste a recouery that is ordeyned in the lawe for them ẏ bee wronged to recouer theyre ryghte bye, and me thinketh that great inconuenience and hurte may folowe whan suche recordes may so lightlye bee auoided by a secrete intente or vse of the parties and by a nude and bare auerment and matter in dede, and specially sith such a matter in dede may be alledged that is not true wherby may rise great strife betwene the parties, and greate confusion and vncertaine in the law but neuertheles sith oure intēt is not at this time to treat of ẏ matt I pray thee touch shortly sōe of ẏ causes why there hath bin so many ysons put in estate of landes to the vse of other, as there hath bin, for as I here say few men be sole seysed of theire owne lande. S. Ther hath ben many causes therof, of the which some bee put away by diuers statuts, & some remain yet, wherefore thou shalt vnderstād ẏ some haue put their land in feoffement secretlye to the intent ẏ theye ẏ haue ryghte to the lande shoulde not know againste whom to bring their accyon and ẏ is much what remedied by diuers statuts ẏ geue accions againste parnours and takers of the profits. And sometime suche feffementes of trust haue ben made to haue maintenaunce & bering of theire feoffes, whiche paraduenture were great lordes or rulers in the countrey, and therefore to put awaye suche mayntenaunce: treble damages bee geeuen by statute agaynste them that make suche feoffements for maintenaunce. And sometime they were made too the vse of Mortmaine whiche might than bee made wyth-

out forfaiture though it were prohibite that the freholde might not be geuē in mortmain. But ꝑ is put away by the statut of Richard the seconde And sometime they were made to defraude the lordes of wardes, reliefes, harryots, and of the landes of their villems, but those pointes bee put aways by diuers statutes made in the tyme of king Henry the.viij. Sometime they were made to auoide executions vpon statute Staple, statut Marchaunt and Recognisance, and remedye is prouided for that, ꝑ a mā shal haue execucīō of all such landes as any parson is seysed of to the vse of him ꝑ is so bounde at the tyme of execucion sued in the.xix yere of H. the.viij. And yet remain feoffements, fines, and recoueries in vse for many other causes, in maner as many as ther did before the saide estatute. And one cause whye they be yet thus vsed is to put away tenācy by ꝑ curtesy and titles of dower. Another cause is for that landes in vse shall not bee put in execucion vpon a statute Staple, statute marchant, nor recognisance, but suche as bee in the handes of the recognisor at the time of the execucion sued. And sometime lands be put in vse ꝑ they shoulde not be put in execucīō vpō a writ of Extendi facias ad valēcīā. And sometime such vses bee made ꝑ he to whose vse &c. may declare his will theron & sometime for suerty of diuers couenants in indentures of mariage & other bargains, & these .iij. last articles bee the chiefe & principall cause whye so much land is put in vse Also lands in vse be noe assets neither in a Formedon nor in an accyon of Dette againste the heire: ne they shal not bee put in

in execucio by an Elegit sued vpō a recouery as some mē say, & these be the very chiefe causes as I now remember why so much land standeth in vse as there dothe, and all the sayde vses be reserued by the intent of the parties vnderstand or agreed betwene thē, and that many tymes directly against the wordes of feoffement fyne, or recouere, and that is done by the lawe of reason as is aforesayde. D. May not an vse bee allygned to a straunger as wel as to be reserued to the feoffour if the feoffour so appointed it vppon hys feoffement. S. Yes as wel, and in lykewyse to the feoffe and ỹ vpon a free gifte without any bargain or recōpence if the feoffour so will. D. What if no feoffement be made but ỹ a mā graūt to his feffe ỹ fro thence forthe he shall stand seysed to hys owne vse, is not ỹ vse chaūged though there bee no recompence. S. I thynke yes for there was an vse in Esse before the gyfte whiche hee may as lawfully geue awaye as hee might the lande if he had it in possession. D. And what if a man being seised of land in fee graunte to another of his mere motion without bargaine or recompence ỹ he fro thencefoorth shalbe seysed to the vse of the other, is not that graunt good? S. I suppose that it is not good, for as I take the lawe: a man cannot commence in vse but by liuery of seison or vpon a bar gaine or some other recompence. D. I holde me contented with that thou hast saide in this Cha. for thys time & I pray thee shewe mee what diuersitie ỹ putteste betwene those two cases that thou haste beefore rehearsed in the .xx. Chapiter and in the xxi.

Chapter of this presente booke. S. I wyll & good wyll.

¶ The diuersitie bewene two cases here after folow, wherof one is put in the xx. Chapter, and the other in the.xxi. Chapter of this present booke.

The.xxiij. Chapter.

The firste case of the sayde twoo cases is thys, A man maketh a feffement by deede indented vpon a cõdicion that the feoffe shall pay certaine rẽt yerely to a straũger &c. & if he pay it not: ẏ it shal be lawful to ẏ stranger to enter into ẏ lande. In this case I said before in ẏ. xx. Chapter ẏ the straunger might not enter because ẏ he was not priuy vnto ẏ condicion. But I saide that in that case ẏ feoffour might lawfully reẽtre by the firste wordes of the endẽture because they imply a cõdiciõ in the law & that the other wordes (ẏ is to say) ẏ the straũger should enter be void in law & conscience. And therefore I sayde farther that whan the feoffour had reentred that he was seysed of the lande to hys owne vse & not to the vse of the straunger, thoughe hys entent at the makyng of the feoffement were that the straunger after his entre should haue had ẏ lãd to his owne vse if he might haue entred by the lawe. And the cause why I thinke that the feoffour was seised in that case too his owne vse I shall shewe thee afterward. The secõd case is this, a mã maketh a feoffe=

a feffement in fee, and it is agreed vpō ȳ feffemēt ȳ the feoffe ſhal pay a yerely rent to a ſtraunger, & if he pay it not: ȳ than the ſtrāger ſhall entre into the land. In this caſe I ſaid as it appeareth in ȳ laide. xxi. Chapter, ȳ yf the feoffe payde not ȳ rent: ȳ the ſtraūger ſhould haue the vſe of the lande thoughe hee maye not by the rules of the lawe enter into the lande, and the diuerſitie betwene ȳ caſes me thinketh to be this. In ȳ firſte caſe it appeareth as I haue ſaid before in ȳ ſayd xx. chapter, ȳ the feoffour might lawfully reenter by the law for not paimēt of rent, and than whan hee entred accordinge: he by ȳ entre auoided the firſt liuery of ſeyſon in ſo muche ȳ after ȳ reentre hee was ſeyſed of the lande of lyke eſtate as hee was before the feoffement. And ſo remaynethe nothing, whereupon the ſtraunger might ground his vſe, but onely the bare graunte or entente of the feoffoure whan hee gaue the lande to ȳ feoffe vppon condicion that he ſhoulde paye the rent to the ſtraunger, and if not, that it ſhould bee lawefull to the ſtraunger to enter for the feoffemente is auoided by ȳ reenter of the feffour as I haue ſayde before, and as I ſayde in the laſt chapiter, as I ſuppoſe a nude or bare graunte of him that is ſeyſed of lande is not ſufficient to begynne an vſe vpon. D. A bare graunte maye chaunge an vſe as thou thy ſelfe agreed in the laſte Chapyter, whye thanne maye not an vſe as well beegynne vppon a bare graunte. S. Whan an vſe is in Eſſe he that hath ȳ vſe may of his mere mocion geue it away yf he wyll without recompence as he might ȳ land if he had it in poſſeſſion

first liuery

bare graūt

no vſe

Nauye

Eſſe

but I take it for a grou̅d that he cannot so begin an vse without a liuery of seison or vpon a rec̄o-pence or bargain, & that there is such a ground in the law ꝯ it may not so begin it appeare the thus it hath be̅ alwai holde̅ for law that if a mā make a deede of feoffement to another and delyuer the dede to him as his dede, ꝯ in that case hee to whō the dede is deliuered hath no title ne medlyng w̄ the land afore liuery of seyson bee made to hym but onely that he may enter and occuppe the land at the will of the feoffour, and there is noe booke sayeth that the feoffour in that case is seised ther of before liuery to the vse of the feoffe. And in likewise if a manne make a dede of feffement of twoo acres of lande that lie in two shieres inten-ding to geue them to the feoffe and maketh liue-rie of seisō in the one shire & not in the other, in this case it is cōmonly holden in bokes that the dede is void to ꝯ acre where no liuery is made ex cept it lie w̄in ꝯ view saue only that he may e̅ter & occuppe at will as is aforesaide, & there is noe booke that saith that the feoffe shoulde haue the vse of the other acre, for if an vse passed therebye than were not the dede void to all intents & yet it appeareth by the wordes of ꝯ dede that the fe-offour gaue the lāds to the feoffe, but for lacke of liuery of seyson the gift was void & so mee think-eth it is here w̄out liuery of seison be made ac-cordig. But in ꝯ second case of the said two cases the feoffe may not re̅ter for non payment of the rent & so the firste liuerye of seyson continueth & standeth in effect, and therupon the first vse may well beginne and take effecte in the straungers

of

of the land whan the rent is not payde vnto hym according to the firſt agrement. And ſo me thynketh ꝑ in the firſte caſe the vſe is determined becauſe the liuery of ſeiſō whereupon it commēced is determined, & that in the ſecond caſe the vſe of the land taketh effect in ꝑ ſtraunger, for not paiment of the rent by the graunt made at the firſte liuerie which yet continueth in his effecte, and this me thinketh is ꝑ diuerſitie betwene ꝑ caſes.

D. yet notwithſtandinge the reaſon that thou haſte made, me thinke that if a manne ſeiſed of landes maketh a gifte thereof by a rude promyſe without any liuery of ſeiſon or recōpence to hym made: and graūt that he ſhalbe ſeyſed to his vſe, ꝑ though the promiſe be void in the lawe, ꝑ yet neuertheleſſe it muſte holde and ſtande good in conſcyence and by ꝑ law of reaſon, for one rule of the lawe of reaſon is, ꝑ wee maye dooe nothyng againſt the trouth and ſith the trouth is that the owner of the grounde hath graunted that he ſhal bee ſeyſed to the vſe of the other: ꝑ graunte muſt nedes ſtande in effecte or els there is no trouthe in the grauntour.

S. It is not agaynſte the trouthe of the grauntour in this caſe thoughe by ꝑ graunte he be not ſeiſed to the vſe of the other, but it proueth that hee hath graunted, that the law will not warrant him to graunt, wherefore his graunt is voide. But yf the grauntour had gone farther and ſaide that hee would alſo ſuffer the other to take ꝑ profytes of the landes wyth out let or other interruption, or that hee wonlde make him eſtate in ꝑ lād whā he ſhould be required, than I think in thoſe caſes he were bounden

is required make eſtate.

in conſcience by that rule of ỹ law of reaſon that thou haſt remẽbred to parfourme thẽ, if he intẽded to be boũden by his promiſe for elſe he ſhould go againſt his owen trouthe & againſte his owne promiſe. But yet it ſhall make noe vſe in ỹ caſe, nor he to whom ỹ promiſe is made ſhal haue noe accion in the law vpon that promiſe althoughe it bee not parfourmed, for it is called in the lawe a nude or naked promiſe. And thus mee thinketh ỹ in the firſt caſe of the ſaid two caſes the graũte is now auoided in the law by the reentre of ỹ feffour & ỹ the feffoure is not boũdẽ by his graunt neither in lawe nor conſcience, but in the ſeconde caſe he is bound, ſo ỹ the vſe paſſeth frõ hym as I haue ſayde before. D. I holde me content with thy conceite for thys time, but I pray thee ſhew mee ſomewhat more at large what is takẽ for a nude contracte or a naked promiſe in the lawes of Englande and where an accion maye lye thereuppon & where not. S. I wil & good will ſay as me thinketh therein.

What is a nude contract or naked promiſe after the lawes of Englande, and whether any accion maye lye therupon.

The.xxiiij. Chapter.

FIrſt it is to bee vnderſtand that contracts be grounded vppon a cuſtome of ỹ realme and by the law that is called (Jus gentium) and not directly by the law of reaſon, for whan all thinges were

were in commō: it neded not to haue contractes, but after ꝑparty was brought in, thei were right expedient to all people, so ꝯ a man myghte haue of his neibour ꝯ hee hadde not of his owne, and that coulde not bee lawfully but by his gyft, by way of lendyng, concorde, or by some lease, bargaine or sale, and suche bargaines and sales be called contractes and be made by assent of ꝯ parties vpon agrement betweene them of goodes or lads for money or for other recōpence, but of money, vsuel, for money vsuel is no contracte. Also a concorde is properly vpon an agreemente betwene the parties & diuers articles there, some rising on ꝯ one part & some on ꝯ other as if Jhō at Stile letteth a chābre to Henry Hart & it is farther agreed betwene thē ꝯ ꝯ said Hēry Hart shal go to borde & the said Jhon at Stile & the said Henry Hart to pay for ꝯ chamber & bording a certain sume &c. this is ꝑperly called a cōcorde but it is also a contract & a good action lieth vpō it. howbeit it is not much argued in the lawes of England what diuersitie is betwene a contract a concorde, a promise a gift, a lone, or a pledge, a bargaine, a couenaunt, or suche other, for ꝯ intēt of the law is to haue ꝯ effect of the matter argued and not the termes, and a nude contracte is where a manne maketh a bargaine, or a sale of hys goodes or landes without anye recompence appointed for it. As if J saye to another J sell thee all my lande or all my goodes and nothynge is assigned that the other shall geeue or paye for it that is a mude contracte, and as J take it: yt is voide in the lawe and conscyence, and a nude

or

or naked promise is wher a mā promiseth another to geue him certain money such a day or to build him an house, or to do him such certain seruice, & nothing is assigned for the moneye, for the building, nor for the seruice, these bee called naked promyses, because there is nothing assigned why they shoulde bee made, & I thynk no accion lyeth in those cases thoughe they bee not parfourmed. Also if I promise to another to keepe him such certain goods safely to suche a tyme, & after I refuse to take them there lyeth no accion agaynste me for it, but if I take thē & after they be lost or ēpaired through my negligent kepinge, there an accion lyeth. D. But what opinion hold theye that bee learned in the lawe of England in suche promises ẏ bee called naked or nude promyses, whether doe they holde ẏ they ẏ make the promise be bounden in conscience to performe theire promise though they cannot be cōpelled thereto by the lawe or not. S. The bokes of the lawe of England treate litle thereof, for it is lefte to the determinaciō of Doctours, and therfore I pray thee shew me somwhat now of thy mind therin and than I shal shewe thee therin somwhat of ẏ myndes of dyuers ẏ bee learned in the lawe of ẏ realme. D. To declare that matter playnelye after the saying of Doctours: it woulde aske a long time & therefore I will touche it briefely to geue ẏ occasion to desire to here more therin here after. Firste thou shalte vnderstande ẏ there is a promise ẏ is called an aduowe, and ẏ is a promise made to god and hee that doth make suche a vowe vppon a deliberate mynde entendynge to par-

perfourme it is bounde in conſcyence to doo it though it be onely made in the heart wyth out pnoñcyng of wordes, and of other promiſes made to man vpon a certain conſideracion, if the promiſe be not againſt ẏ lawe. As if A. pmiſe to geue B. xx. pound becauſe he hath made him ſuch a houſe or hath lent him ſuch a thing or ſuche other like, I thinke him bounde to kepe his promis. But if his promiſe be ſo naked ẏ there is no maner of conſideracion whye it ſhoulde bee made than I thinke him not bound to parfourme it for it is to ſuppoſe ẏ there was ſome errour in the making of the promiſe, but if ſuch a promiſe bee made to an vniuerſitie, to a citie, to the churche, to ẏ clergy or to poore men of ſuche a place, & too the honour of god or ſuche other cauſe like, as for maintenaunce of learning, of the cõmon wealth, of the ſeruice of God, or in reliefe of pouertye or ſuche other than I thinke ẏ he is bounden in conſciẽce to parfourme it though there be no conſideracion of worldly profit ẏ the graūtour hath hadde or intendeth to haue for it, and in all ſuch promiſes it muſt be vnderſtand that hee ẏ made the promiſe intended to be bound by his promiſe, for els commonlye after al Doctours hee is not bound, vnleſſe he were bounde to it before his promyſe. As if a man promyſe to geue his father a gowne ẏ hath neede of it, to kepe him fro colde, and yet thynketh not to geeue it hym, neuertheleſſe hee is bounde to geeue it for hee was bounde thereto before. And after ſome Doctours a man maye bee excuſed of ſuche a promiſe in conſcience by caſualtie ẏ commeth after the promiſe if it be

ſo

so ꝯ if hee had knowen of ꝯ casualtye at the making of the promise hee would not haue made it. And also suche promises if they shall binde theye muste bee honest, lawfull, and possible, and elles theye are not to bee holden in conscience thoughe there be a cause &c. And if the promise bee good and with a cause thoughe noe worldelye profite shall growe therby to him ꝯ maketh the promyse but onely a spirituall profit as in the case before rehearled of a promise made to an vniuersitie, to a Citie, to ꝯ churche, or such other & with a cause as to ꝯ honour of god, other there is moste commoniye holden ꝯ an accion vppon those promyses lieth in the lawe Cannon. S. Whether doest thou meane in such promises made too an Vniuersitie, to a Citie, or to suche other as thou hast rehearsed before and with a cause, as to the honour of god or such other. That the party shal be bound by his promise if he intended not to bee bounden thereby ye or nay. D. I think nay no more than vpō promises made vnto commō parsons. S. And than me thinketh clerely ꝯ noe accion cā lie against him vpon such promises, for it is secrete in his owne conscience whether hee ētended for to be bound or nay. And of ꝯ intēt inward in the hart: mans law cannot iudge, and ꝯ is one of the causes why ꝯ lawe of god is necessary (ꝯ is to say) to iudge inward things, and yf an acciō should lye in ꝯ case in the lawe Cannon, thā should the lawe Cānō iudge vpō ꝯ inward intēt of the heart, which cānot bee as me semeth. And therefore after diuers ꝯ bee learned in the lawes of the realme all promises shal bee taken in thys

manor

Spirituall

Promise

Canon

inwarde

accoũb

maner, ꝑ is to saye, If hee to whom the promyse is made: haue a charge by reason of the promyse whyche hath also parfourmed: than in ꝑ case he shall haue an accion for that thynge ꝑ was promysed thoughe hee ꝑ made the promyse haue noe worldelye profit by it. As if a manne saye to another heale suche a poore manne of his disease, or make an hyghe waye and I shal geue thee thus muche, and if hee dooe it, I thinke an accion lyeth at the common lawe. And moreouer thoughe the thynge ꝑ hee shall doe bee al spirituall yet if hee parfourme it I thinke an accion lyeth at the common lawe. As if a manne saye to another, fast for mee all the nexte Lente and I shall geue thee .xx. pound and hee parfourmeth it, I thinke an accion lyeth at the common lawe. And in likewise if a manne saye too another, marrye my doughter and I wyl geue thee .xx. pound. Vppon this promyse an accion lyeth yt hee marrye hys doughter and in this case hee cannot discharge the promyse though he thought not to bee bounde therebye, for it is a good contract, and hee may haue Quid pro quo, that is to say the preferm̃et of his doughter for his money. But in those ꝓmises made to an Vniuersity or such other as thou hast remẽbred before, & suche causes as thou hast shewed, ꝑ is to say, to the honour of god or to ꝑ encrease of learning, or suche other like wher the party to whome the promyse was made is bounde to no new charge by reason of the promyse made to hym but as hee was bounde to before, there they thynke ꝑ no accion lyeth agaynste hym thoughe hee parfourme not

coale pitt

lyght-waye

fastinge

mariage

quid & quo

newe charge

hys

his promyse, for it is no contracte, and so hys owne conscience must bee his iudge whether he entended to be bound by this promise or not. And yf he entended it not: than hee offended for hys dissimulacion onelye but yf hee entended to bee bounde, than if hee performe it not: vntrouthe is in him, and hee proueth himselfe to bee a lier; which is prohibited as wel by ỹ lawe of God as by the lawe of reasō, & farthermore many that be learned in the lawe of Englād holde ỹ a manne is as muche bounden in conscience by a promise made to a common parson if hee entended too bee bounde by his promise as he is in the other cases ỹ thou hast remembred of a promise made to the church, or the clergy or such other, for they saye ỹ as much vntrouth is in the breaking of ỹ one as of the other, & they say ỹ the vntrueth is more to bee pōdred thā ỹ parson to whō the promyses be made. D. But what hold they if ỹ promise be made for a thing past, as I promise thee .xl. poūd for that thou hast builded me suche a house, lyeth an acteō there. S. They suppose nay, but he shal be bound in conscience to performe it after hys intent as is before said. D. And if a man promise to geue another .xl. poūd in recōpence for suche a trespasse ỹ he hath done him, lieth an acciō there? S. I suppose nay, & the cause is for ỹ suche promise be no perfect contracts for a contract is pro party where a mā for his money shal haue by assent of the other party certaine goods or some other ꝑfit at ỹ time of ỹ cōtract or after but if the thing be ꝑmised for a cause ỹ is past by waye of a recompence then it is rather an accorde than a con-

promise

buildyng

trespas

cōtract

promesse vpō trespasse voyd in law

contract, but then the lawe is ẏ vppon such accorde the thinge that is promised in recompence must be paide or deliuered in hand, for vppon an accorde there lyeth no accion. D. But in the case of trespas whether holde they that hee bee bounde by his promyse thoughe hee entended not to bee bounde thereby. S. They thynke nay no more then in the other cases ẏ be put beefore. D. In the other cases he was not bound to that hee promised but onelye by his promyse, but in this case of trespas he was bound in cõscience before the promise to make recompence for the trespas, and therefore it seemeth that he is bound in conscience to keepe his promise though he entended not to bee bounde thereby.

S. Thoughe hee were bounde before the promise to make recompence for his trespas, yet hee was not bounden to no summe in certayn but by his promyse, and because that the summe maye be to muche or to litle and not egall to the trespas, and that the party to whome ẏ trespas was done notwithstanding the promyse is at libertye to take his accion of trespas if hee wyll, therefore they holde ẏ he may be his owne iudge in cõscyence whether hee entended to bee bounde by hys promyse or not, as he may in other cases, but if it were of a det, then they holde ẏ he is bounden to perfourm his promise in conscience. D. What if in the case of trespas he affirme his promise with an othe. S. Then they hold that he is bounde to perfourme it for sauinge of his othe thoughe he entended not to be bounden but if hee intended to be bound by hys promyse, then they

no actiō in the spirituall cowrt &c.

saye that an othe needeth not but to enforce the promise for they say he breaketh the lawe of reason which is that we may doe nothing against ỹ trouth as well when hee breaketh his promyse ỹ hee thoughte in his owne heart to bee bounde by as he doth when hee breaketh hys othe thoughe the offence bee not so greate by reason of the perjurye, more ouer to that thou sayeste that vppon suche promyses as thou haste rehearsed beefore shall lye an accion after the lawe Canon, vereiye as to that in this realme there can no accyon lye theron in the spirituall courte if the promyse bee of a temporall thinge, for a prohibition or a premunire facias shoulde lye in that case. D.

That is maruayle sithe there can no accyon lye thereon in the kinges courte as thou sayest thy selfe. S. That maketh no matter, for thoughe there lye no accyon in the kynges court agaynst executours vppon a simple contracte, yet if they bee sued in that case for the dette in the spirituall court a prohibicion lyeth. And in likewise yf a mā wage his lawe vntruely in an accion of dette vpon a contract in the kinges courte, yet he shall not be sued for the periury in the spirituall courte and yet no remedye lyeth for the periurye in the kinges court, for the prohibicion lyeth not onelye where a manne is sued in the spirituall courte of suche thinges as the party may haue his remedy in the kinges court: but also where the spirituall courte holdeth plee in suche case where they by the kinges prerogatiue and by the auncient custome of the realme oughte none to holde. D.

I wyll take aduisement vppon that thou haste

sayde

ayde in this matter til another time and I pray
t hee now procede to another question.

¶ The .xx. question of the Student.

The .xxv. Chapter.

A manne hathe twoe sonnes, one borne before espousels and the other after espouselles and the father by his wyll bequeteth to hys sonne & heire all his goodes whiche of these two sonnes shall haue ỹ goods in conscience. D. As I sayde in our first dialogue in latine the last chapter the doubte of this case dependeth not in ỹ knowyng what conscience wil in ỹ case, but rather in knowing whiche of the sonnes shalbee iudged heyre (that is to say) whether he shalbe takē for heire that is heire by the spirituall law, or hee that ys heire by the lawe of the realme, or els that it shalbee iudged for him that the father tooke for heyre. S. As to that poynte admitte the fathers mynde not to bee knowen, or els that hys minde was that he should be taken for heire that should bee iudged for heire by that lawe that in thys case it ought to bee iudged by. And than I pray thee shewe me thy mynd therin, for though the question be not directly depending vppon the point to see what conscience wil in this case yet it is right expedient for ỹ well ordering of conscyence that it bee knowen after what lawe it shalbe iudged, for if it ought to be iudged after ỹ temporal law who should be heire, thā it were agaīst cōscience if the iudges in ỹ spiritual law shoulde

iudge him for heire þ is heire by þ spiritual lawe & I think they shuld be bound to restitucīō ther by, & therefore I pray the shew me thine oppiniō after what law it shalbe iudged. D. Mee thinketh that in this case it shalbee iudged after the lawe of the Churche, for it appeareth that the bequest is of goodes, and therefore if any sute shall be taken vpon the execucion of the wyll for that bequest, it must be taken in the spirituall courte and when it is depending in the spirituall courte mee thinketh it must be iudged after the spirituall lawe, for of the temporall lawe they haue no knowledge nor they are not bounde to knowe it as mee thinke and more stronger not to iudge after it. But if the bequest hadde beene of a chattell real as of a lease for terme of yeares or of a ward or such other then the matter shoulde haue come in debate in the kinges court, and then I thinke the iudges there shoulde iudge after the lawe of the realme and þ is þ the yonger brother is heire and so mee thinketh the diuersitie of the courtes shal make the diuersitie of the iudgement. S. Of that might folowe a greate inconuenience as me seemeth, for it might bee þ in suche case bothe chatels reall and chatelles personell were in the wyll, and then after thine oppinion the one sonne shoulde haue the chatels parsonell, and the other sonne the chatels reall, and it cannot bee conuenientlye taken as mee thinkethe but that the fathers wyll was þ the one sonne shoulde haue all & not to be deuyded. Therefore me thinketh that he shalbee iudged for heire that is heyre by þ cōmon lawe. And that the iudges spirituall in this

case

case bee bounde to take notice what the common lawe is, for sithe the thynges that bee in varyaunce bee temporall, that is to saye, the goods of the father, it is reason that the righte of them in thys realme shalbee determined by the lawe of the realme. D. Howe maye that bee, for the Iudges spirituall knowe not the lawe of the realme ne they cannot knowe it as to the moste parte of it, for muche parte of the law is in such speache ẏ fewe menne haue knowledge of it and there is no meanes ne familiaritie of studye betwene them that learne the saide lawes for they be learned in seueral places & after diuers waies and after dyuers maners of teachings and in diuers speaches and commonlye the one of theym haue none of the bookes of the other, & to bynde the spirituall iudges to geue iugement after that lawe that they knowe not, ne that they cannot come to the knowledge of it semeth not reasonable. S. They must doe therein as the kynges iudges must doe when any matter commeth before them that ought to bee iudged after the spiritaall lawe whereof I put dyuers cases in our first dialogue in Englishe the vii. Chap. that is to saye, they must either take knowledge of it by theire owne studye, or els they must enquire of thē ẏ be learned in the law of the church what the lawe is and in likewise must they doe But it is to doubte ẏ some of them woulde bee lothe to aske any suche question in such case or to confesse ẏ they are bounde to geeue theire iudgement after the temporall lawe and sureiye they may lightly offende theire conscience. D.

knowledg of law

studye

Inquire

I suppose that some be of oppinion that they are not bounden to knowe the lawe of the Realme, & verely to my remembrance I haue not harde ỹ iudges of the spirituall lawe are bound to know the law of the realme.

S. And I suppose that they are not onlye bounden to knowe the lawe of the Realme, or to doe that in them is to know it when the knowledge of it openeth the righte of the matter that dependethe before them, but that they bee also bounden to knowe where and in what case they ought to iudge after it, for in suche cases they must take the kinges lawe as the lawe spirituall to that poynte and are bounden in conscyence to followe it as it maye appeare by dyuers cases whereof one is this. Two iointenauntes be of goodes and the one of them by his last will bequeteth all his part to a straunger and makethe the other ioyntenaunte his executour and dyeth, if hee to whome the bequest is made, sue the other iointenaunt, vppon the legacye as executour &c. vppon this matter shewed the iudges of the spirituall lawe are bounden to iudge the will to be voide, because it is voide by the lawe of the realme whereby the iointenant hath right to the whole goodes by ỹ title of the suruiuoure and is iudged to haue the goodes as by the firste gifte which is before the title of the will & muste therefore haue preferment as the elder tytle, and if the iudges of the spirituall courte iudge otherwise they are bound to restitution, & by like reason the executours of a man that is outlawed at the tyme of his death maye dyscharge them selfe

in

in the spirituall court of the parforming of legacies because they be chargeable to the king, & yet there is no such lawe of outlagarie in ỹ spiritual lawe. D. By occasion of that thou hast sayde before I would aske of thee this questiō. If a pson of a Churche alien a porcion of dismes according as the spirituall lawe hath ordained, ys not that alienacion sufficient though it haue not the solempnities of the temporall lawe. S. I am in doubte therein if the porcion bee vnder the fourthe parte of the value of the Churche but if it be to the value of the.iiii. parte of the church or aboue, it is not sufficient, and therefore was the writt of right of dismes ordained, and if in a writ of right of dismes it be iudged in the kinges court for the patron of the successour of him that alieneth because the alienacion was not made according to the common lawe, then the iudges of the spirituall lawe are bounden to geeue theyre iudgement accordinge to the iudgement geeuen in the kinges courte. And in lykewise if a person of a Churche agree to take a pencion for the tithe of a mille, if the penrion be to the fourth parte of ỹ value of the Churche or aboue than it must be alened after the solēpnities of the kinges lawes as landes and tenementes muste, or els the patrone of the successour of hym that alieneth may bring a writte of ryght of dysmes and recouer in the Kynges courte and then the Judges of the spirituall courte are bounden to geue iudgement in the spirituall courtes accordingly as is afore-saide. D.

I haue heard say ỹ a writte of right of dismes is

geuen by the statute of Westminster the seconde, and ꝑ speaketh onely of dismes and not of pencion. Where a Parson of a Churche is wronfully deforced of his dismes and is iet by an Indicauit to aske his dismes in the spirituall courte than his patrone maye haue a writte of right of dismes by the statute that thou speakest of for there laye none at the common lawe for the person had there good right thoughe he were iett by the Indicauit to sue for his right. But when the parson had no remedy at the spirituall lawe there a writte of right of dismes laye for the patron by the common lawe as well of pencions as of dysmes, and some saye ꝑ in suche case it laye of lesse than of the fourthe parte by the common lawe but that I passe ouer. And the reason why it laye at the common lawe if the disme or pencyons were aboue the fourth part &c. was thys by the spirituall lawe the alienacion of the person wyth assent of the bishoppe and of the Chapiter shall barre the successoure wythout assent of the patron, and so the patrone myght leese hys patronage and hee not assenting therto for hys encumbent might haue no remedy but in the spirituall courte and there hee was barred wherefore the patrone in that case shall haue hys remedye by the common lawe where the assent of the ordinary and Chapiter wout the patron shal not serue as is laide before. But where the encumbrat hadde good right by the spirituall lawe there lay no remedy for the patrone by the cōmō law though the encumbent were iett by an Indicauit, & for ꝑ cause was the saide statute made

and

and it lieth as well by the equitie for offrynges and pensions as for dismes. Than ferther I wolde thinke that where the spirituall courte maye holde plee of a temporall thinge that they must iudge after the temporall lawe, and that ignorannce shall not excuse them in that case, for by takinge of theire office they haue bounde themselfe to haue knowledge of as much as belõgeth to theire office as all iudges bee spirituall and temporall. But if it were in argument in thys case whether the eldest sonne myght bee a preste because hee is a bastarde in the temporall lawe that shoulde bee iudged after the spirituall lawe for the matter is spirituall. D.

yet notwithstandinge all the reasons that thou hast made I cannot see howe the Iudges of the spirituall lawe shalbee compelled to take notice of the temporall lawe seeing that the most parte of it is in frenche tongue, for it were hearde that euery spiritual iudge should be cõpelled to learne the tongue. But if the lawe of the realme were sette in suche order that they that intend to study the lawe Canon might furste haue a sighte of the lawe of the realme as they haue nowe of the lawe Ciuill, and that some bookes and treatises were made of cases of cõscience concerning those two lawes as there bee nowe concerninge the law Ciuill & ỹ law Canon I would assent that it were righte expedient and then reason myght serue the better ỹ they shoulde bee compelled to take notice of the lawe of the realme as they be nowe bounden in such countries as the lawe Ciuill is vsed to take notice of the lawe. S.

offringe

Iudges Spirituall & temporall

bastard

law anent of ye toge

Canõ

Ciuil

We

Spirituale
Temporal

The.xxvi.chapter.

Mee thinketh thine oppinion is right good and reasonable but tyl such an order bee takē they are bounde as I suppose to enquire of them that bee learned in the common lawe what the lawe ys, & so to geue theire iudgement accordinge, if they will keepe them selfes fro offence of conscience, and for as muche as thou hast well satisfyed my mynde in all these questions before: I pray thee now that I may somwhat feie thy mynde in dyuers articles that bee written in dyuers bookes for the ordring of conscience vpon the lawe Canon and Cyuyle, for me thinketh that there be diuers conclusions put in diuers bookes as in the summes called Summa Angelica and Summa roselia, and dyuers other for the good order of conscience that bee agaīst ỹ lawe of this realm and rather blinde conscience than to greue anye light vnto it.

Iudgmēt

Sūma Angelica

Postilla.

D. I pray the shewe me some of those cases.

S. I will with good will.

Whether an Abbot maye with conscience present to an aduowson of a Church that belongeth to the house without assent of the couent.

The.xxvi.Chapter.

IT appeareth in the Chapter. Et agnoscitur de hiis que fiunt a prelatis the which Chapter ys recited in the summe called Summa Angelica in the tytle Abbas the.xxvii.article that he maye not without anye custome or anye speciall priuiledge

Angelica

ledge to help therein. S. Trouth it is that there is such a decretale, but they that bee learned in the lawe of England holde the decretale bindeth not in this realme, and thys is the cause why they do holde that opynion. By the lawe of the Realme the whole disposicion of the landes and goods of the Abbey is the Abbottes onelye for the tyme that hee is Abbot and not in the couent, for they bee but as deade persones in the lawe and therefore the Abbot shal sue and be sued onely without the couent doe homage fealtie atturne make leases and present to advousōs onely in his own name, and they say farther that this auctho̅itie cannot bee taken from him, but by the lawe of the realme, and so they saye ỹ the makers of the decretale exceded their power. Wherefore they say it is not to bee holden in cō̅science, no more then if a decree were made that a lease for terme of yeares or at will made by the Abbot without the couent should be immediatly voyde, and so they thinke that the Abbot may in this case presente in his owne name without offence of conscience because the sayde decreatale holdeth not in this Realme. D. But manye bee of oppinion that no man hath auctho̅itie to present in right and conscience to any benefice ẅ ture but the Pope or that he hath his auctho̅itie therein derived fro the Pope, for they saye that for as muche as the Pope is the vicar generall vnder god and hath the charge of the soules of al people that bee in the flocke of Chriſtes churche it is reason that sith he cannot minister to all ne doo that is necessarye to all the people for theyre soules

Decretals

Abbotte

fealtie

and

aduousons

leaſe

without

Cure

vicar

generall

patron

soules health in hys owne parson that he shal assigne deputies for hys discharge in that behalfe. And because patrones clayme to present to churches in this realme by theire owne right wythout tytle deryued from the Pope they saye that they vsurpe vppon the Popes auctoritie & therfore they conclude that thoughe the Abbot haue tytle by the lawe of the realme to present in thys case in his owne name that yet because that title is againste the Popes prerogatiue that that title ne yet the lawe of the realme that maintaynethe that tytle holdeth not in conscyence . And they saye also that it belongeth to the lawe Canon to determyne the righte presentmente of benefices, for it is a thynge spirituall and belongethe to the spirituall iurisdiccion as the depriuation from a benefice doth and so they saye the sayde decretall bindeth in cõscience thoughe in the lawe of the realme it bynde not. S. As to the firste consideracion. I wouide ryght well agree that yf the patrones of Churches in thys realme clayned to patte encumbentes intoo suche Churches as shoulde fall voyde of theire patronage wythout presentinge them to the Byshop or if they clayned that the Byshoppe shoulde admit suche encumbente as they shoulde present without anye examinacion to bee made of hys abilitie in that behalfe, that the clayme were against reasone & conscience for the cause that thou hast rehearsed: but for as muche as the patrones in this realme claime no more but to present theire encumbẽtes to the Byshoppe and then the Byshoppe to examyne the abilitie of the encumbent and if he fynd

Abbot

spirituall

Canon

Decretall

patrons

inuest

bishop

hym

hym by the examinacion not able to haue cure of soule, hee then to refuse him & the patrone to present another that shalbe able, and if he be able thē the bishop to admit him, institute him: & inducte him. I think ẏ this clayme & theire presentmēts theruppon stande with good reason and conscyence, and as to the second consideracion it is holden in the lawes of the realme that the ryght of presentment to a Churche is a temporall inheritaunce & shall discende by course of enheritaunce fro heire to heire as landes and tenementes shall and shalbe taken as an asses as landes and tenementes bee and for the tryall of the righte of patronages bee ordeined in the lawe dyuers accyons for them that bee wronged in that behalfe as writes of right of aduowson Assises of Darreins presentment Quare impedit, and dyuers other which alway without time of mynde haue bene pleded in the kinges courtes as thynges parteining to his crowne and roiall dignitie, and there fore they say in that this case his lawes ought to bee obeyed in lawe and conscience. D.

If it come in variaunce whether hee that ys so presented bee able or not able by whome shall the abilitie be tried? S. If the ordinarye bee not party to the accion, it shalbee tried by the ordynarye, and if he be partye it shalbee tryed by the metropolitane. D. Then the lawe is more reasonable in that point than I thought it hadde ben but in ẏ other point I will take aduisemt in it tyl another tyme, & I pray thee shew mee thy mynde in this point if an Abbot name his couēt with him in his presentacion doth that make the

presenta-

presentacion voide in the lawe or is the presentacion good that notwithstanding? S.

Abbot cannot name for his name

I think it is not voide therfore, but the naminge of them is voide and a thinge more than needeth for if the abbot bee disturbed hee must bring hys accion in his owne name wythout the couent.

D. Then I perceyue well that it is not prohibit in the law of Englande, but that the Abbot may name the couent in his presentacion wyth him, and also take theire assent whome hee shall present if he will, and then I holde it the surest waye, that he so doe, for in so doing hee shal not offende nother in lawe nor conscience. S.

Attetatio

To take the assent of the couent whom he shall present and to name them also in the presentacion knowinge that hee maye doe otherwise bothe in lawe and conscience if he will, is no offence. But if hee take theire assent or name them with hym in the presentacion thinking that hee is so bound to doe in lawe and conscience, setting a conscience where none is, and regardeth not the lawe of the Realme that will discharge hys conscience in this behalfe if hee will so that hee presente an able man as hee maye doe wythout theyr assent, there is an errour and offence of conscyence in the abbot. And in likewyse if the Abbot presente in his owne name, and therefore the couent sayeth that hee offendeth conscience in that hee obserueth not the lawe of the Churche for that hee taketh not their assent, than they offende in iudgynge him to offende, that offendeth not. And therefore the sure waye is in thys case to iudge bothe the saide lawe of suche effecte as they bee

and

and not to set an offence of cõscience by breaking of the said decree whiche standeth not in effect in this behalfe within this realme.

¶ If a man fynde beastes in his grounde doynge hurt, whether may he by his owne auctho= ritie take them and kepe them til hee bee satisfied for the hurt.

¶ The xxvii. Chapter.

THys question is made in the Summe called Summa rosella in the tytle of restitucion that is to saye restituțio. xiii. the. ix. article, and there it is aunswered that hee maye not take theym for to holde them as a pledge tyl hee bee satisfied for the hurte: but that hee may take them & keepe them til he knowe who oweth them that he may thereby learne against whome to haue his reme= dy. Is not the law of the realme so in likewise? D. No verely for by the law of the Realme he that in that case hathe the hurte maye take the beastes as a dystresse and putt them in a pounde ouert so it bee within the same shyre, and there let them remaine till the owner will make hym amendes for the hurte. D. what cal= lest thou a pounde ouert. S. A pounde o= uerte is not onelye suche poundes as be commõ ly made in townes and lordshippes for to putt in beastes that bee distrained, but it is also euerye place where they maye bee in lawfullye not ma= kinge the owner an offendoure for theyre bee= ynge there, and that it bee there also that the owner

owner maye lawfully geeue the beastes meate & drinke while they bee in pounde. D.

And if they dye in pounde for lack of meate whose ieoperdye is it? S. If it bee such a pound ouerte as I speake of, it is at the perill of hym that oweth the beastes so that, he that hadde the hurte shalbee at libertie to take his accion for the trespas if he will, and if it be not a lawful pound then it is at the perill of hym that distrayned, and so it is if hee driue them out of the shyre. And they dye there.

D. I put case that hee that oweth the beastes offer sufficient amendes, and the other will not take it but kepeth the beastes still in pound, may not the owner take them out? S. No for he maye not bee his owne iudge. And yf he do, an accion lyeth againste him for breakynge of the pound, but hee must sue a repleuyn to haue hys beastes deliuered him out of pound & thereupon it shalbee tryed by .xii. men whether the amendes that was offred were sufficient or not, and if it bee found that the offer was not sufficient: then he that hath the hurte shall haue suche amendes as ỳ xii. men shal assesse. D. If it bee found by ỳ xii. men ỳ the amendes were sufficient, shal he ỳ refuseth to take it haue no punishement for his refusell and for keepinge of the beastes in pounde after that tyme. S. I thinke no, but that he shall yelde dammages in the repleuin because the issue is tried agaynste hym. D. I putte case ỳ the beastes after the refusell dye in pounde for lacke of meate at whose ieoperdye is it than. S. At the ieoperdye of hym that owed

owed the beastes as it was before for he is boũd at hys peryll by reason of that wronge that was done at the beginning to see that they haue meat as long as they shalbe in pound, vnles the kings writ com to deliuer them, and hee resisteth it, for after that time it will be at his iopardye if they dye for lacke of meate & the damages shalbee recouered in an accion brought vpon the statut for disobeying the kinges writ.

Gill

damage

statut

kinge writ

Whether a gift made by one vnder the age of .xxv. yeres be good.

The. xxviij. Chapiter.

IT appeareth in Summa angelica in the title donacio prima, the. viij. article ỹ a manne before the age of .xxv, yere maye not geeue, wythout yt bee with the auctoritie of his tutour. Is it not so lykewise at the common lawe? D. The age of infantes to geeue or sell their landes & goodes in the law of England at, is .xxi yeare or aboue so ỹ after that age the gyfte is good, and before ỹ age it is not good, by whose assent soeuer it bee except it be for his meat and his drinke or apparell, or ỹ he do it as executour in parfourmaunce of the wyll of his testatour or in some other lyke cases that neadeth not to bee rehearsed here and that age must be obserued in this realme in law and conscience and not the sayde age of fyue and twenty yeare. D. I put case it were ordeyned by a decree of the Churche that if anye manne by his wyll bequeneth goods too an other, and

Angelica

tutor

full age 21.

meat drink

Executor

deuised

of Church

bequeath goods

willeth that they shall be deliuered to him at his full age, and ye in the case fiue and twenty yeare shalbe taken for the full age, shall not ye decree be obserued and stand good after the law of England? D. I suppose it shal not, for thoughe it be long to the churche to haue ye probate and the execucyons of testamentes made of goodes and catels, except it be in certaine Lordshyppes and seignories ye haue them by prescripcion, yet the church may not as it semeth determin what shal be the lawful age for any person to haue ye goods for that belongeth to the kynge and his lawes to determine, and therfore if it were ordeyned by a statute of the realme, ye he should not in such case haue the goods till he were of the age of .xxv. yeare, ye statute were good and too bee obserued as well in the spirituall lawe as in the lawe of the realme, and if a statut were good in that case, the a decre made therof is not to be obserued, for the ordering of ye age may not be vnder two seuerall powers, and one property of euery good lawe of manne is ye the maker excede not his auctorite, and I thynke that the spirituall Iudges in that case ought to iudge the full age after the lawe of the realme, seyng that the matter of the age concerneth temporal goodes, and I suppose farther that as the kyng by auctorite of hys parliament may ordayne ye al wylles shalbe voyde, and that the goodes of euery man shalbe disposed in suche maner as by statut should be assigned that more stronger he may appointe at what age such wils as be made shalbe performed. D. thinkest thou then ye the kyng may take awaye the power of ye ordi-

ordinary that he shall not call executoures to accompte. S. I am somewhat in doubt therein but it semeth that yf it might bee enacted by statute, ꝯ all willes should be void as is afore sayde that than it myght bee enacted ꝯ no man shoulde haue auctoritie to call none to accompt vpon such wils, but such as the statute shal therin appointe for he ꝯ maye do the more, maye do the lesse, notwithstandyng I will nothinge speake determynatelye in ꝯ point at this time, ne I meane not that it were good to make a statute ꝯ all wylles should be voyde, for I thinke them right expedient but myne entente is to proue ꝯ the common lawe may ordaine the time of the full age as wel in willes of temporal thinges as otherwise, and also ꝯ will shalbe made. And if it may so be then much stronger it belongeth to the kynges lawes to enterpretate wils cōcerning temporal thinges as well when they come in argument before his iudges as when they come in argumente beefore spiritual iudges, & that they ought not to be iudged by seucrall lawes (ꝯ is to saye) by the spiritual iudges in one maner, and by the kyngs iudges in an other maner.

ordinarius

accompt

do mar do ꝯ lapse

spiritual Judge

kyngs Judge

¶ If a man bee conuict of heresy before the ordinary, whether his goods bee forfeyted.

The.xxix.Chapter.

donacio prima

IT appeareth in Summa angelica in the tytle donacio prima the.xiij.article, that hee that is

The.xxiix. Chapter.

An heritike may not make executors, for in ye law his goodes bee forfayte, what is the lawe of the realme therein. ℣. If a mā be cōuict of heresies and abiure he hath forfeit no goodes, but if he be cōuict of heresie & be deliuered to lay mens hāds then hath he forfeit al his goodes that he hath at that time ye he is deliuered to them, thoughe hee be not put in execucion for ye heresy, but his lāds he shal not forfait except he be ded for the heresy, and then he shal forfait thē to ye lordes of the fee, as in case of felonye, except they be holden of the ordinary, for then the king shal haue the forfayture, as it appeareth by a statute made the second yere of kynge Henry the fift the. vij. chapter. ℣. Wee thinketh that as it belongeth onelye to the churche to determine heresies, that so yt belongeth to the church to determine what punishmēt he shal haue for his heresie, except death whyche they may not be iudges in, but if ye church decree ye hee shall therefore forfait hys goods, me thynketh that they be forfeite by that decree. ℣. Nay verely, for they be tempozall and belong to the iudgement of the kynges court, and I think the ordinarye mighte haue set no fine vppon one empeched of heresie til it was ordeyned by the statute of Henry the. iiij. ye hee maye set a fine in the case if hee se cause, and than the kinge shall haue ye fine as in the saide statute appeareth.

¶ Where diuers patrōs of an aduowson and the churche voydeth, the patrons varye in their presentmēts, whether the Bishop shall haue liberty to present which of the encumbentes that he will or not.

¶ The

The. xxx. Chapter.

This question is asked in Summa rosella, in the tytle Patronus the. ix. article and there it appeareth by the better opinion that he may present whether clarke hee will, howbeit the maker of the saide summe, saith by ỹ rigour of the lawe the Bishop in such case may present a stranger, beecause the patrons agree not, and in the same chapter Patronꝰ the .xv. article.

It is said ỹ he must be preferred ỹ hath the most merites and hath the most parte of the patrons. And yf the nomber bee egall, that than it is too consider the merytes of the patrons, and yf they bee of lyke meryte, than may the Bishoppe commaund them to agree and to present again. And yf they cannot yet agree, then the libertie to present is geuen to the Bishop to take which he wil and if he may not yet prelēt without great trouble than shall the Bishop ozder the church in the best maner he can, and if he cannot ozder it, then shall he suspend the church and take away the re likes to the rebukes of the patrons, and yf theye wyll not so bee ozdered then must hee aske helpe of the tempozaltye, and in the .xv. article of the sayde title patronus, It is asked whether it bee expedient in such cases ỹ the mozе part of the patrons agre hauing respect to al ỹ patrons oz ỹ it suffise to haue ỹ mozе parte in cōparison of ỹ lesse part as thus. There be. iiij. patrons, to present one clarke: the thirde presenteth another, and the fowerth another, he ỹ is presēted by. ij. hath not ỹ mozе part in cōparison of all patrons foz theye be egal, but he hath the mozе part hauing respect

to the other presentmentes, to this question it ys aunswered ꝑ either the presentmente is made of thē ꝑ be of colege & there is requisite ꝑ more part hauing respect to al the colege, or els euery man presenteth for him selfe as cōmonly do lay men ꝑ haue the patronage of their patrimony, & than it suffiseth to haue ꝑ more part in respect of the other partes, doth not the lawe of England agree to these diuersities? S. No verely D. What order then shalbe taken in the lawe of England yf the patrons vary in their presentmēts. S. After the lawes of England this order shalbe taken, if they be iointenaunts, or tenants in cōmon of the patronage, and they vary in presentmēt ꝑ ordinary is not bounden to admit none of their clarkes neyther the more part nor the lesse, and if the. vi. monethes passe or they agre thē he may presēt by the lapse. But he may not presēt ẅin the. vi monethes, for if he do they may agree & bring a quare impedit against him, & remoue his clarke, & so ꝑ ordinary shalbe as disturbour. And if ꝑ patrōs haue ꝑ patronage by discent as coparceners thā is the ordynary bound to admit the clarke of the eldest sister for the eldest shal haue the preferment in the law and if she will, & than at the next auoidaunce the next sister shal present and so by turn, one sister after another, tyll all ꝑ sisters or theire heires haue presented, & then the eldest sister shal begin again, & this is called a presenting by turn & it holdeth alwaye betwene coparceners: ef an aduowson, except theye agree to present together or ꝑ they agree by composicion to present in some other maner, & if they do so ꝑ agremēt must stād

but

but this must be alway except that if at the first auoidaūce ẏ shalbe after the death of the commō auncester, the kyng haue the warde of the yongest doughter, that than the kyng by his prerogatiue shal haue the presentment. And at the next auoidaunce the eldest sister and so by turne. But it is to vnderstād ẏ if after the deathe of the common aūcester ẏ church voideth, and the eldest sister p̄sented together w̄ an other of the sisters, & the other sisters euery one in their owne name or together, that in ẏ case the ordinary is not bounde to receiue none of theire clarkes but maye suffer the church to runne into the laps, as it is said before, for he shal not be bound to receiue the clark of the eldest sister, but wher she presenteth in her owne name. And in this case where the patrons vary in presentment, the church is not properlye said litigious, so ẏ the ordinary should be bound at his peril to direct a writ to inquire (de iure patronatus) for ẏ writ lyeth where two present by seuerall titles, but these patrons present al in one title, & therefore the ordinary may suffer it to pās if hee will into the laps, & this maner of presentments must bee obserued in this realme in lawe and conscience.

¶ How long time the patron shall haue to present to a benefice.

The.xxxi. Chapter.

THis question is asked in Summa angelica in the title Jus patronatus the.xvi. article, and there it is answered ẏ if the patron be a lay man that he shal haue.iiij.monethes, and if hee bee a clarke, he shal haue.vi.monethes.

S. And by the common law he shall haue syxe monethes whether he be a lay man or a clarke, & I see no reason why a clarke shoulde haue more respect than a laye man, but rather the contrarye

D. Fro what tyme shal the syxe monethes bee accompted. S. That is in dyuers manners after the maner of the voydaunce, for if ꝧ church voide by death, creasion, or cession: the syxe monethes shalbe counted from the death of the encumbent, or fro the creacion, or cession, wherof the patron shalbe compelled to take notice at his peryll, and if the voidaunce be by resignacion or depriuacion, than the syxe monethes shal begynne when the patron hath knoweledge geuen him by the Bishop of the resignacion or depriuacion.

D. What if hee haue knowledge of the resignacion or depriuacion and not by the Byshop, but by some other, shal not the syxe moneths beginne than fro the tyme of that knoweledge. S. I suppose that it shall not begyn till he haue knowledge geuen hym by the Byshoppe. D. An vnion is also a cause of voydaunce howe shall the vi. monethes be rekoned there. S. There can no vnion bee made but the patrons muste haue knowledge, and it muste be appointed who shall present after that vnion, ꝧ is to say, one of them or both, either iointly or by tourne one after another as the agremēt is vppon the vnion, and sith the patron is priuy to the auoydaunce and is not ignorant of it, the syxe monethes shalbe accounted fro the agreemēt. D. I see well by the reason that thou hast made in this Chapter, that ignorance sometime excuseth in the law of England

land, for in some of the said auoydaunces it shall excuse the patrons as it appearethe by the reasons aboue, and in some it shall not, wherefore I pray thee shew me somwhat where ignorance excuseth in the lawe of England and where not after thyne oppinion. S. I wyll withe good wyll hereafter do as thou saist yf thou put me in remembraunce therof. But I wouldе yet moue thee somwhat further in such questiõs as I haue moued thee before cõcerninge the diuersities betwene the lawes of Englande and other lawes, for there be many mo cases thereof ꝑ as me seemeth haue right great nede for the good order of conscience of many parsons to be reformed & to be brought into one opinion both amõg spiritual & temporal, as it is in ꝑ case wher doctours hold opinion ꝑ the statute of laye menne ꝑ restrayne libertie to geue landes to the churche should bee voide, and they say further ꝑ if it were prohybyt by a statute ꝑ no gift should be made to forcines ꝑ yet a gift made to the churche should bee good for they say ꝑ the inferiour may not take awaye the auctoritie of ꝑ superiour and this sayinge is directly against the statutes wherby it is prohybyt ꝑ landes shoulde not bee geeuen into mortmayne, & they saye also that byquestes and gifts to the churche must be determined after the law Canon, and not after the lawes and statutes of laye men, and so they regarde much to whom the giftes is made whether to the church or to make causwais, or to cõmon parsons, & beare more fauour in giftes to the churche then to other, and the lawe of the realme beholdeth the thinge ꝑ is

ignorantia excusat

mort mains

forcius

superior

Canon

rapto rapiendo.

geuen

geuen and pretended ꝑ if the thing that is geuen bee of landes or goodes that the determinacyon therof of right belongeth in this realme to the kyngs lawes whether it be to spirituall man or tempozall to the churche or to other, & so is great diuision in this behalfe when one preferreth hys opinion, and another his, and one thys iurisdyccion, & another that, and ꝑ as it is too feare moze of singularity thē of charity, wherfoze it seemeth that they ꝑ haue ꝑ greatest charge ouer ꝑ people spetially to ꝑ helth of their soules, are most boūd in cōsciēce befoze other to looke to this matter, & to do ꝑ in thē is in al charity to haue it refozmed not beholding ꝑ tempozal iurisdiccion nor spirytual iurisdiccion but ꝑ cōmon welth & quietnes of the people, and ꝑ vndoubtedly would shortlye folow if this diuision were put away, whiche I suppose verely wil not be but ꝑ al menne wythin ꝑ realme both spiritual & tēpozall be ozdzed & ruled by one lawe as to tēpozall thinges notwithstāding forasmuch as ꝑ purpose of thys writing is not to treat of this matter, therfoze I will no farther speake therof at this tyme. D. Than I pray thee procede to another questiō as thou saist thy mind is to do. S. I will with good will.

¶ If a manne be excommūnēged whether he may in any case be assoyled without making satisfaccion.

The.xxxij. Chapter.

In the summe called Summa rosella, in the title absolucio quarta, the second article: it is sayde

Excommunicate

sayde that hee ꝑ is excommunicate for a wronge if he be able to make satisfaccion ought not to be assoyled but hee doe satisfie, and that they offend ꝑ doe assoyle hym, but yet neuerthelesse he is assoyled, and if he bee not able to make amendes ꝑ he must yet be assoyled, takynge a sufficient gage to satisfye if hee be able hereafter, or els that hee make an othe to satisfie if hee bee able, And these sayinges in manye thynges holde not in the lawe of Englande. D. I pray thee shew me wherin the lawe of the realme varieth therefro. S. If a man be excommunicate in the spirituall courte for det, trespas, or such other thynges as belong to the kinges crowne, and to his roiall dygnitie, there he ought to be assoyled wythoute makynge any satisfaccion, for the spiritual court exceadeth their power in that they helde plee in those cases and the partye if hee will maye thereuppon haue a Premunire facias, as well againste the partye ꝑ sued him, as against the iudge, and therefore in this case they ought in conscience to make absolucio̅ without any satisfaccio̅, for they not onelye offended ꝑ party in calling him to aunswere before them of such things as belong to the law of ꝑ realme, but also ꝑ king, for he by reason of such suites may lese great aduantages by the reaso̅ of the writs originals, iudicials, fines, amerciame̅tes & such other thinges as might grow to him if suits had ben take̅ in his courts according to hys lawes, & according to his saying it appereth in diuers statuts ꝑ if a man lay violēt hands vpon a clarke & beat him, ꝑ for the beating amends shall be made in the kynges court, and for the laying

Assoilled

Premunire facias

indictable synne

beating a Clarke

of violent handes

violent handes

Clarke

Christian court.

satisfactiō

penance

cōmaunde hym to assoyle

of violent handes vpon the clarke amendes shall be made in the court christian. And therfore if the iudge in the courte christian woulde awarde the party to yelde damages for the beating, he did againste ỹ statute, but admit that a man bee excommenged for a thyng that the spirituall court may awarde the party to make satisfaction of, as for the not inclosing of the churchyard, or for not apparelyng of the churche conueniently. Thē I thinke the party must make restitucion or laye a sufficient caution if he be able or hee bee assoyled, but if the partye offer sufficiente amendes and haue hys absolucion, and the iudge wyll not make him his letters of absolucion, yf the excommengement bee of recorde in the kinges courte then the kinge maye write vnto the spirituall Iudge commaundynge hym that he make the party his letters of absolucion vpon payne of a contempt, and if ỹ said excommunicaciō be not of recorde in the kynges courte than the partye may in such case haue his accion agaynst ỹ iudge spirituall for that he woulde not make hym hys letters of absolucion, but if he bee not assoiled or if he be not able to make satisfaccīō and therfore the iuge spritual will not assoyle him, what the kynges lawes maye do in that case I am somewhat in doubt, and wyll not muche speake of it at this tyme, but as I suppose hee maye as well haue his accion in that case for the not assoilyng him as where he is assoiled and ỹ the iudge wyll not make hym his letters of absolucion, and I suppose the same lawe to bee where a man is accursed for a thynge that the iudge had no power

Curse

to

to accurse hym in as for det, tresp as, or such other
D. There he may haue other remedies as a Pre
munire facias, or such other, and therfore I sup=
pose the other accyon lyeth not for hym. S.
The iudge and the party may bee dead, and then
no Premunire lyeth, & thoughe they were alyue
and were condempned in a Premunire, yet that
shoulde not auoyde ỹ excommengement, & there=
fore I thinke the accyon lyeth specially yf he bee
thereby delayed of accions that he might haue in
the kynges court, if the sayde excommengement
had not bene.

Whether a Prelate may re= fuse a legacie.

The. xxxiij. Chapter.

IT is moued in the sayde summe named Rosel=
la, in the title alienacio. xx. the. xi. article whe=
ther a prelate maye refuse a legacye, wherein di=
uers opinions be recited there, which as me thin
keth haue nede after the lawes of the realme to
bee moze plainly declared. D. I pray thee shew
mee what the lawe of the realme wyll therein.
S. I thynke that euerye prelate and soueraine
ỹ maye onelye sue and bee sued in his owne name
as Abbottes, Pryours, and suche other maye
refuse anye legacye that is made to the house, for
the legacye is not perfect tyll hee to whom it is
made assent to take it, for els if he myght not re=
fuse it, hee myghte bee compelled to haue landes
wherby hee myght in some case haue great losse,

but

but than if he intende to refuse, he muste as sone as hys title by the legacye failethe, relynquyshe to take the profites of the thyng bequethe, for yf one take the profites thereof, hee shall not after refuse the legacye: but yet hys successour maye if he will refuse the takyng of the profites to saue the house fro yeldinge of damages or fro arrerages of rentes if any suche be, and like law is of a remainder as is in legacye, for thoughe in the case of a remainder, and also of a deuise as moste men say, ỹ freholde is cast vpon hym by the law when the remainder or deuise faileth: yet it is in hys libertie to refuse the takinge of the profites and to refuse ỹ remainder if he will as he might dooe of a gyft of landes or good, for if a gyfte bee made to a man that refuseth too take it, the gyfte is voide, and if it bee made too a manne that is absent, the gyfte taketh not effect in him tyll hee assent: no more than if a man dissease one to another mannes vse, hee to whose vse the disseyson is made, hath nothing in that lande ne is no dysseysour till he agree. And to suche disseysons and giftes, an Abbot or Priour may disagre as wel as any other man, but after some men a Bishop of a deuise or remainder ỹ is made to the Bishop & to ỹ deane & Chapiter, nor a Deane & a Chapiter of a deuise or remainder made to thē ne yet the master of a college of such a deuise or remainder made to him & to his brethren, may not disagree wout the Chapiter or brethren, for the Bishop of such lands as hee hath & the Deane and Chapiter, ne the Deane nor master of such lande as they haue with ỹ Chappter or brethren maye

not

not answere, wout the chapiter & brethren, and therfore some saye ꝑ if the Deane or maister will refuse or disclaime in the landes ꝑ theye haue by the deuise or remainder ꝑ disclaimour, without the chapiter or brethren is voide. And therfore it is holden in the lawe ꝑ if a Bishop bee vouched to warrantie, & the tenaunt byndeth him to the warranty by reason of a lease made to him by the Byshop and by the deane and the Chapter, yelding a rent, ꝑ in that case the bishop may not disclaime in ꝑ reuercion withoute the assent of the Deane and chapiter. But yet if a reuersion were graũted to a Deane and a Chapiter & ꝑ deane refuse, the graunt is voide, and so it appearethe ꝑ a deane maye refuse to take a gifte or graunt of landes or goodes or of a reuersion made to hym and to the chapiter and yet hee may not disagree to a remainder or deuyse, and the diuersity is because ꝑ remainder and deuise be cast vppon hym without any assent, wherunto neither the deane nor the chapiter by them selfe may in no wise disagre without the assent of the other, but a gift or graunt is not good to them wout they bothe assent, and in suche giftes as I suppose an infaunt maye disagre as well as one of full age, but yf a woman couert disagree to a gift, and the husbād agree, ꝑ gifte is good D. What yf the lands in that case of a manne and his wyfe be charged with damages, or be charged wᵗʰ more rent then the lande is worth, and the husband dye shal the wyfe bee charged to the damages or to the rent, S. I thynke naye if the wyfe refuse the occupacion of the ground after her husbandes death, and

disclaimer

bysshop

warranty

deane

maister

warrytie

deuise

infat

woman

agreed

rent

wife

damage

wiffe refuse occupacō after ye husband death.

wife

& I think the same law to be if a lease bee made to ỹ husbād & to ỹ wife yelding a greater rēt thā ỹ land is worth, ỹ the wife after ỹ husbāds death may refuse ỹ lease to saue her fro the payment of the rent, & so may ỹ successour of an Abbot. D. And if the husband in ỹ case ouer liue the wyfe and than make his executours and dye, whether may his executoures in likewise refuse the lease.

Executors

S. If they haue goodes sufficient of theire testatour to pay the rent, I thynke they maye not refuse it, but if theye haue not good suffycyent of their testatours to paye the rent to the ende of the terme, I thynke if they relinquishe the occupacion they maye by speciall pleading dyscharge them selfe of the rente and the lease, and yf theye doe not they may lightly charge thē selfe of their owne goodes. And yf a lease bee made for terme of lyfe the remainder too an Abbot for terme of lyfe of Jhon at Style, reseruyng a greater rent than the lande is woorthe, and after the tenaunt for terme of lyfe dyeth the Abbot may refuse the remainder for the cause before rehersed & in case that the Abbot assent to the remaynder wherby he is charged to the rent during the time ỹ he is abbot, and after he dieth or is deposed lyuyng the said Jhon at Style, in ỹ case hys successour may discharge hym selfe by refusyng the occupacion of the lande as is aforesayde. But I thinke that if suche a remaynder were made to a deane and to the chapiter, and ỹ deane agree without the assent of the Chapiter, that in ỹ case the deane and the Chapiter may afterward disagree to the remaynder, and that the acte of the deane

wyth

sute ꝑ assēt of the chapiter shal not charge the chapiter in ꝑ behalf, & thus it appeareth though the meaning of the said chapiter & article in the lawe sūme be, ꝑ a prelate maye not disagree vnto a legary for hurting of the house, yet he maye after ꝑ lawes of ꝑ realme disagree therto where it shuld hurt his house. And if in a Precipe q̄ redd there be but one tenant be he spirituall or tēporall, & he refuse by waye of disclaimer in such case where he may disclaim by the lawe, there the land shal vest in the demādant, & if there be two tenants thā it shal vest in his felowe, if he will take ꝑ whole tenāncy vpō him or els it shal vest in the demādāt. But if an Abbot or a lay mā refuse the takings of the writs, & shewe a speciall cause why it shuld hurt him if he did assēte be therby discharged as is said before. In whō the lāde shal than veste it is more doubt, wherof I will no farther speake at this time. And thus it appeareth by diuers of the cases ꝑ be put in this chapter ꝑ he that is ignorant in the lawe of ꝑ realme, shal lacke the true iudgemēt of cōcistere in many cases. For in many of these cases ꝑ that may bee done therein by the lawe must also be obserued in cōscience &c.

legary

assise

distresse

donāte

veste

¶ whether a guift made vnder a condicion be voide if the souerain only breake the condicion.

¶ The .xxxiiii. Chapiter.

IN Summa rosella in the title alienacio, the xii. article, is asked this question whether a

guift made vnder a certaine fourme maye be auoyded or reuoked because the Prelate or soueraine onelye dyd breake the fourme, and yt is there aunswered that it may not for that ỹ deede of the Prelate only ought not to hurt the church and if those wordes vnder a manner be vnderstande of a guilte vppon condicion as they seeme to bee, then the saide solution holdeth not in thys Realme neither in lawe nor conseyence. D. What is then the lawe of Englande if a manne enfeffe an Abbot by deede indented vppon condicion that if the Abbot paye not to the feoffoure a certaine somme of money at suche a daye ỹ then it shalbee lawfull to the feoffoure to reentre, and at that daye the Abbot fayleth of hys payemente maye the feoffoure lawfullye reentre and putte out the Abbot. S. Yea verelye for hee hadde no ryghte to the lande but by the guyfte of the feoffour and his guift was condicionell and therfore if the condicion bee broken it is lawfulle by the lawe of Englande for the feoffour to reentre and to take his lande agayne and to holde yt as in his firste estate by whyche reentre after the lawes of the realme hee dispoyleth the firste lyuerye of seyson and all the meane actes doone betwene the first feoffement and the reentre, and it forceth litle in the lawe in whome the defaulte bee that the condicion was not performed whether in the Abbot or in his couente or in bothe: or in anye other person whatsoeuer he be: excepte it bee in the feoffoure himselfe. And it is greate diuersitie betwene a clere guyfte made to an Abbot wythout condicion, and where it is made

with

wythe condicion, for when yt is made without condicion the acte of the Abbot onelye shall not by the common lawe disherite the house but it bee in verye fewe cases, but yet vppon dyuers statutes the sufferaunce of the Abbot onely may disherite the house as by hys cesser, or by leuyinge of a crosse vppon a house againste the statute thereof made, in whyche case the house thereby shall lese the land, & some say that by ỹ common law vppon his disclaimoure in auowrie a writ of right of disclaimour lieth, but if the gift be vpō condicō it standeth neither with law nor conscience that the Abbot shoulde haue any more parfite or sure estate than was geuen vnto hym, and therefore as the sayde estate was made to the house vppon condicion so that estate maye bee auoyded for not perfourminge of the condicion and I thinke verely that this I haue saide is to be holden in this Realme both in the law and conscience, and that the decrees of the churche to the contrary bynde not in this case. But yf landes bee geuen to an Abbot and to hys couente to the intente to synde a Laumpe, or to geue certeine almes to poore nieme thoughe the intente bee not in those cases fulfylled, yet the feoffoure nor hys heyres maye not reentre for he reserued no reentre by expresse wordes, ne in the woords when he saithe to the intent to synde a Laumpe or to geue almes &c. Is implyed no reentre, ne the feoffoure nor hys heyres shall haue no remedye in suche cases vnlesse it bee within the case of the statute of westminster the secounde that geueth the Cessauit de Cantaria.

The.xxxv.chapter.

¶ whether a couenant made vppon a guyft to the Churche that it ſhal not be alieued (bee good.)

¶ The.xxxv.chapter.

IN the ſayde Summe called Summa roſella in the ſaid title alienatio, the.xiii.article, is aſked this queſtion, whether a couenaunt made vppon a gifte to the church that it ſhall not bee alieued (be good.) And ꝯ ſame queſtion is moued againe in ꝯ ſaid ſumme called roſella, in ꝯ title cõdicio ꝯ firſt article & in Sũma Angelica, in ꝯ title Donatio pꝛima, the li.& .iii. articles, & the intent of ꝯ queſtion there is whether notwithſtandinge ꝯ the cõdiciõ be good to ſome alienaciõs, whether ꝯ yet it be good to reſtraine alienaciõs foꝛ the redempciõ of them ꝯ be in captiuitie vnder the infideis oꝛ foꝛ the greatꝛ aduauntage to the houſe and though the better oppinion bee there that the condicion may not bee bꝛoken foꝛ redemption of them that bee in captiuitie: yet it is in maner a whole oppinion that it may be ſolde foꝛ ꝯ greater aduauntage to the houſe, foꝛ it is ſaid there that it maye not bee taken but that the intent of the geuer was ſo, and therfoꝛe they call the condiciõ that pꝛohibiteth it to be ſolde (condicio turpis) that is to ſay a vyle condicion, wherfoꝛe they regarde it not: but verely as I take it yf a condiciõ maye reſtraine anye maner of alienacion than yt ſhall as well reſtraine alyenations foꝛ the twoo cauſes befoꝛe rehearſed as foꝛ any other cauſes, & though mee thinketh ꝯ that condiciõ is good, &

after

after the lawes of the realme that vpon guyftes to the Churche reſtreineth alienacions, yet I ſhall touche one reaſon that is made to the contrary, that is this. There is a cleare grounde in the lawe that if a feoffement bee made to a common parſon in fee vppon condicion ỹ the feoffee ſhall not alien to no man that condicion is voide becauſe it is contrary to the eſtate of a fee ſimple to bynde him that hath that eſtate that he ſhould not alien if hee liſte and ſome ſaye that an Abbot that hathe lande to hym and to hys ſucceſſoures hath as highe and as parfit a fee ſimple as hath a laye manne that hath lande to hym and to hys heires, and therefore they ſaye that it is well againſte the lawe of the Realme to prohibite that the Abbot ſhall not alien as yt is to prohibite a laye manne therof, and thoughe it bee therein true as they ſaye as to the highnes of the eſtate, yet me thinketh there is great diuerſitie betwen the caſes concerning their alienacions, for when landes bee geeuen in fee ſimple to a common parſon: the intent of the lawe is that the feoffe ſhall haue power to alien, and yf hee doe alien, yt is not againſte the entent of the law ne yet agaynſt the intent of the feoffoure, but whan landes bee geeuen to an Abbot and to hys ſucceſſoures, the intent of the law is and alſo of the geuer as it is to preſume that it ſhould remaine in the houſe for euer, and therefore it is called Mortmaine, that is to ſay a deade hand as who ſayeth that it ſhall abide there alway as a thing deade to the houſe. And therefore as I ſuppoſe the lawe will ſuffer that condicion to bee good ỹ is made to reſtraine

that ſuche mortmaine ſhoulde not be alienedand that yet it may prohibite the ſame condicion to be made vppon a feoffement made in fee ſimple to a manne and to his heires, for that is the moſte high, the moſt free, and the moſt pureſt ſtate that is in the lawe. But the lawe ſuffreth ſuch a condicion to be made vpon a guift in taile becauſe ỹ ſtatute prohibiteth that no alienacion ſhould bee made therof. And than as the lawe ſuffreth ſuch a condicion vppon a guifte in mortmaine, that ys to ſaye, that it ſhall not bee alienedto bee good, than it iudgeth the condicion alſo accordingto ỹ wordes, that is to ſaye, if the condicion bee generall that they ſhal alien to no man as this caſe is that it ſhalbee taken generallye accordinge to the wordes, and it ſhal not be taken that the intent of the geuer was otherwiſe than he expreſſed in his guifte though parcaſe if he were aliue himſelfe and the queſtion were aſked him whether he would be contented it ſhould bee alyened for the ſaid two cauſes or not, hee woulde ſaye ye, but when he is dead no man hath auctoritie to interpretate his guift otherwiſe than the lawe ſuffereth, nor otherwyſe then the wordes of the guift bee. And if the condicion bee ſpeciall that is to ſaye, that the lande ſhall not bee alienedto ſuch a man or ſuch a man, than the condicion ſhal be taken according to the wordes, and then thy maye bee aliened as for that condicion to anye other but to them to whome it is expreſſelye prohibite that the lande ſhould not be alienedto. And if the landes in that caſe bee alienedto one that is not except in the condicion, than hee may

alyene

alyene the lande to him that is first excepted wt=
out breaking of the condicion, for condicions bee
taken strattlye in the lawe and without equitie.
And thus me thinketh that because the said con=
dition is generall and restraineth all alyenacy=
ons, yt it maye not be alienedneyther by the lawe
of the realme ne yet by conscience, no more for yt
saide twoe causes, than it maye for anye other
cause, and this case must of necessitie bee iudged
after the rules and groundes of the lawe of the
realme and after no other lawe as me seemeth.

¶ If the patrone present not within vi. monethes, who shall present.

¶ The.xxxvi. Chapiter.

IN the sayde Summe called Summa rosella, in the tytle Beneficium in principio yt is as=
ked, if the patrone presente not wythin sixe mo=
nethes who shall presente and within what time
the presentment muste bee made. And it is aun=
swered there that if the patron present not with
in. vi. monethes that the chapiter shall haue sixe
monethes to present: and if the chapiter presente
not within. vi. monethe, that then the Wishoppe
shal haue other. vi. monethes. And yf he be neg=
ligent, than the Metropolitane shall haue other
vi. monethes, and yf he present not then the pre=
sentment is devolute to the Patriarke. And yf
the Metropolitane haue no superiour vnder the
Pope, then the presentmente is devolute to the

Pope. And so as it is sayde there the Archebyshop shal supply the negligence of the Byshoppe if he be not exempt, and if he bee exempte the presentment immediatly shal fall fro the Byshoppe to the Pope. And as I suppose these diuersities holde not in the lawes of the realme.

D. Then I praye thee shew me who shal present by the lawes of the realme if the patrone doe not present wythin this sixe monethes. S. Than for default of the patrone the Byshoppe shall presente vnlesse the kynge bee patrone, and if the Bishop presente not within sixe monethes than the Metropolitane shall presente whether the Byshoppe be exempt or not. And if the Metropolitane presente not wythin the tyme limpted by the lawe, than there bee dyuers opinions who shall presente, for some saye that the Pope shal presente, as it is sayde before, and some saye the kynge shall present. D. What reason make they that saye the kynge shoulde presente in that case. S. This is theire reason they saye that the kynge is patrone paramounte of al the benefices within the realme. And they say further that the king and his progenitores kinges of Englande without tyme of mynde haue hadde auctorite to determine the right of patronages in this realm in theire owne courtes, and are bounde to see theire subiectes haue right in that behalf wythin the realme, and that in that case fro him lyeth no appeale. And than they saye that if the Pope in this case shoulde present that than the kynge shoulde not onely lese his patronage paramount but also that he shoulde not some time bee able to

doe

do right to his subiectes.

D. In what case were that. S. It is in this case the lawe of the Realme is, that if a benefice fall voide that the patrone shal present within. vi. monethes: and if he doe not that then the ordinarie shal present, but yet the lawe is farther in that case that if the patrone presente before the ordinarye put in his Clerke: that then the patrone of right shall enioye his presentment, and so it is thoughe the tyme should fall after to the Metropolitane or to the Pope, and yf the presentmente should fall to the Pope, than thoughe the aduowson abode styll voyde, so that the patrone might of ryght presente, yet the patrone shoulde not knowe to whome hee shoulde present, vnlesse hee should goe to the Pope, and so hee shoulde faile of right wythin ỹ realm. And if parcase he went to the Pope and presented an hable clarke vnto him and yet his clarke were refused & another put in at the collacō of the Pope or at the presentment of a stranger yet ỹ patrone couldе haue no remedye for that wrong wtin the realme, for the incumbent myght abyde styll out of the Realme. And therefore the lawe wyll suffer no title in this case to fal to the Pope. And they saye that for a lyke reason it is that the lawe of the Realme will not allowe an excommengement that is certified into the Kynges Courte, vnder the Popes Bulles. For if the partye offered sufficient amendes, and yet couldе not obtaine his letters of absolution, the kinge shoulde not knowe to whom to write for the letters of absolucion, & the partye could not haue right, and that

that the lawe will in no wise suffer. D. The patrone in that case maye present to the ordinary as longe as the churche is voide, and if the ordinarye accepte hym not, the patrone maye haue hys remedye against hym wythin the realme. But if the Pope will put in an incumbent before the patron present, it is reason that hee haue the preferment as me seemeth before the kinge. S. When the ordinarye hath surcessed his tyme he hath loste his power as to that presentmente, specially if the collatiõ be deuolute to the Pope. And also when the presentment is in the Metropolitane he shal put in ỹ Clerk him self and not the ordinarye, and so there is no defaulte in the ordinarye thoughe hee present not the Clerke of the patrone if his tyme be past, and so there lyeth no remedy againste hym for the patrone. D. Thoughe the encumbente abyde styll out of the Realme yet maye a Quare impedit lye agaynst hym within the Realme, and if the incumbente make defaulte vpon the distresse and appeare not to shewe hys tytle: then the patrone shall haue a writte to the Bishoppe according to the statute, & so he is not without remedye. S. But in thys case he cannot be sommoned, attached, nor distrained, within the Realme. D. Yee maye bee summoned by the Churche as the tenaunte may in a writte of ryghte of aduowson. S. There the aduowson is in demaunde, and here the presentment is onelye in debate, and so hee cannot be summoned by the Churche here no more then if it were in a writte of annuitie, and there the common returne is (q clericus est & beneficiat? non

non habens laicum feodum vbi potest summone-
ri.) And though hee might bee summoned in the
Churche, yet he might neither bee attached nor
distrained there, and so ỹ patron should be with-
out remedy D. And if he were without remedy,
he should yet be in as good case as hee should be
if the king should present, for if the tytle shoulde
be geuē to the king, the patrone had lost his pre-
sentmt clerely for the tyme though the church a-
bide stil voide. For I haue heard say ỹ in suche
presentmts no time after ỹ lawe of ỹ realme ren-
neth vnto the king. S. That is true, but there ỹ
presentment should be taken from him by righte
and by the law and here it should be taken from
him against the law, and there as the law coulde
not help him & that the law wil not suffer. D. yet
me thinketh alway ỹ the title of the laps in such
case is geuen by the lawe of the church, & not by
the temporal lawe, & therfore it forseth but lytle
what the temporall law will in it as me semeth.
S. In such contryes where the Pope hath po-
wer to determine the right of temporal thinges,
I think it is as thou sayest, but in this realme it
is not so. And the right of ꝑsentment is a tempo-
ral thing, and a temporal inheritance, and there-
fore I thinke it belongeth to the kinges lawe to
determine, and also to make lawes who shal pre-
sent after the. vi. monethes as well as before, so ỹ
the title of examinatiō of abilitie or none abilitye
be not therby taken fro the ordinary, and in like-
wise it is of auoidaunce of benefices, that is to
say, then it shalbee iudged by the kynges lawes
when a benefice shalbe said voide and when not

and

ꝓsētmēt is rēpezall

and not by the lawe of the Church as whē a parson is made a Bishopp or accepteth another benefice wythoute lycēce, or resigneth, or is deprived, in these cases the common lawe saith that the benefices be voide, and so they should be, though a lawe were made by the Churche to the cōtrary, and so if the Pope should haue anye tytle in thys case to presente, it shoulde bee by the lawe of the Realme. And I haue not seene ne harde that the lawe of the realme hath geeuen anye title to the Pope to determine anye temporal thing ꝑ maye be lawfullye determined by the kinges courte.

D. It seemeth by that reason that thou hast made nowe that thou preferrest the Kinges auctoritie in presentmentes beefore the Popes, and that me thinketh shoulde not stande with ꝯ lawe of God: sith the Pope is ꝯ vicar generall vnder God. S. That I haue sayde proueth not that, for the highest firmament in presentmentes is to haue auctoritie to examine the abilitie of the parson that is presented, for if the presentee bee able, it suffiseth to the discharge of the ordinary, by whom so euer he be presented and ꝯ auctoritie is not denyed by the lawe of the Realme to belonge alwaye to the spirituall iurysdiccion, but my meaning is that as to the righte of presentmentes and to determine who oughte to present and who not, and at what tyme, and whan the Churche shalbee iudged to bee voyde, and when not, belōgeth to the king & his lawes, for els it were a thinge in vaine for him to holde plee of aduowsons or to determine the righte of patronage in his owne courtes and not to haue auctoritie

auctozitie to determine the right thereof, & these claimes seemeth not to be against the law of god. And so me semeth in this case ꝯ presentmt is geuen ꝯ king. D. And if ꝯ king shuld haue right to present, then might the churche happē to cōtinue voide foz euer foz as we haue said before no time renneth to ꝯ king in such presentments. D. It any such case happe if ꝯ king presēt not then maye ꝯ ozdinary set in a deputie to serue ꝯ cure as hee may do whē negligēce is in other patrōs ꝯ may presēt & do not, & also it cannot be thought ꝯ the king which hath ꝯ rule & gouernāce ouer ꝯ people not only of their bodies but also of their soules wil hurte his cōsciēce & suffer a benefice cōtinually to stand voyd without a curate no moze then he doth in aduowsons ꝯ be of his own presentment.

Whether the presentment and collacion of all benefices and dignities, voyding at Rome belong only to the Pope.

The.xxxvii.Chapiter.

IN the same summe called Summa rosella in the title Beneficium primum, in the.xiii. artycle. It is sayd that benefices, dignities, and personages, voyding in the court of Rome may not be geuen but by the Pope & likewise of the Popes seruauntes and of other that come and goe fro the courte, if they dye in places nye to the courte within twoe dates iourney, all these belong to the Pope, but if the Pope presente not

The plee & patronage to ye kinge

The .xxxvii. chapter.

within a moneth: than after the moneth they to whome it belongeth to presente maye present by theim selfe onely or by their dyear general if they be in farre parties, & these sayinges holde not in the lawe of the realme. D. What is the cause that they holde not in this realme as well as in all other realmes. S. One cause is this. The kinge in this realme accordinge to the auncient right of his crowne, of all his aduowsons that be of his patronage oweth to present. And likewise other patrons of benefices of their presentment, and the plee of the right of presentmentes of benefices within this Realme belonge to the kynge and his crowne. And these tytles cannot be taken fro the kynge and hys subiectes but by theire assente, and the lawe that is made therein to put away that litle bindeth not in this realme and ouer yt before the statute of .xxv. of Edward the .iii. there was a great inconuenience and mischiefe by reason of dyuers proussions and reseruacions that the Pope made to benefices in this Realme contrarye to the olde ryght of the kinge & other patrons in this realme as wel to ye archbishoprickes, Bishoprikes, Deanries, and Abbeis: as to other dignities and benefices of the church And many times aliens thereby had benefices in the realme that vnderstoode not the English tongue, so that they coulde not counsaille comfort the people whan neede required, and by ye occasion greate ryches was conueied out of the Realme, wherefore to auoyde suche inconuenyences it was ordayned by the sayde statute that all patrones as wel spirituall and temporal

Ed. 3/25

should

shoulde haue the presentmēts freely, and in case ẏ collatiō or prouision were made by the Pope in disturbance of any spiritual patrone ẏ than for ẏ time the king shoulde haue the presentmēt, & if it were in disturbance of any lay patron, ẏ then if ẏ patron preſēted not win the half yere after suche voidance nor the Bishope of the place within a moneth áfter the halfe yeare: that then the kynge should haue also the presentmēt, & that the kinge should haue the profits of the benefices so occupied by prouision excepte abbeys and Pryoures & other houses that haue colage and couent, and there the colage and couent to haue the profites & because the statute is generall & excepteth not suche benefices as shall voyde in the courte of Rome or in suche other place as before appereth therefore they be taken to bee within the prouision of the saide estatute as well as the benefices that be voide win the realme, and al prouysours and executours of the sayd collacions and prouisions, & all their attourneys, notaries, & mayntenors shalbee out of the protection of the kynge, and shall haue like punishement as they shoulde haue for executing of benefices voydinge within the realme. D. But I cannot see how ẏ sayde statute may stand with cōscience that so farre restraineth the Pope of his libertie, whych as me semeth he ought i this case right to haue. H. Because as I suppose ẏ patrons ought of right to haue their presentmēts vnder such maner as they claime thē in this realme as I haue saide before, & as in ẏ xxvi. cha. of this booke apereth more at large & also forasmuch as it appeareth euidently

tyme to — present

Colage & couent

Exemt

ẏ Pope

ẏ 26.

that

that great inconuenience foleWed vpon the layde pzouiſions, and that the laide eſtatute Was made to auoide the ſame, whyche ſithe that tyme hathe been ſuffered by the Pope and hath bene alWaye vſed in thys realme Without reſiſtaunce that the ſaide eſtatut ſhoulde therefoze ſtande With good conſcience.

¶ If a houſe by chaunce fall vpon a hoꝛſe that is boꝛoWed Who ſhal beare ẏ loſſe.

¶ The .xxxviii. Chapter.

Caſus fortuitus depoſitus

IN the laide ſumme called Summa roſella, in the title Caſus foꝛtuitus, in the begynninge ys put this caſe if a manne lende to another a hoꝛſe whyche is called there Depoſitum, and a houſe by chaunce falleth vppon the hoꝛſe, Whether in that caſe hee ſhall anſWere foꝛ the hoꝛſe.

if

And it is anſWered there that if the houſe Were like to fall that then it canne not bee taken as a chaunce but as the default of him that had the hoꝛſe delyuered to hym. But if the houſe Were ſtronge and of lykelyhoode and by common preſumpcion in no daunger of falling but that it fell by ſodeyne tempeſt oꝛ ſuche other caſualtie that then it ſhalbee taken as a chaunce, and hee that hadde the kepinge of the hoꝛſe ſhalbe diſcharged and thoughe this diuerſitie agreeth W the lawes of the Realme, yet foꝛ the moꝛe playner declaracion therof & foꝛ the moꝛe lyke caſes & chaunces that may happen to goodes that a man hathe

in

in hys keppynge ẏ be not his owne. I shall adde a lytle more thereto ẏ shalbe somewhat necessary as mee thynketh to the orderynge of conscyence. First a mā may haue of another by waye of lone or borowing, money, corne, wine, and such other thynges where the same thynge cannot bee delyuered if it be occupied, but another thyng of lyke nature & like value must be redeliuered for it, & such thinges he that they be lent to, may by force of ẏ lone vse as his owne. And therefore if theye perishe it is at his ieoparoye & this is moste properly called a lone. Also a man maye lende to another a horse, an oxe a cart, or suche other thynges that maye be deliuered agayne, and they by force of that lone may bee vsed and occupied reasonably in such maner as thei were borowed for, or as it was agreed at the tyme of the lone that theye shoulde bee occuppyed, and if such thinges bee occupied otherwise than accordinge to the intent of the lone, and in that occupacion they perysshe, in what wise so euer they perishe, so it be not in default of the owner, hee that borowed them shall be charged therwith in lawe and conscience, and if hee that borowed them occuppye them in suche maner as they were lent for, and in ẏ occupacyō they perish in default of him ẏ they were lent to, then hee shal aunswer for them. And if they perysh not through his default, than he that oweth them shall beare the losse. Also if a man haue goodes to keepe to a certaine day for a certain recōpence for ẏ keping he shal stand charged or not chargeed aft as default or no default shalbe in hī as before appeareth, & so it is if he haue nothing

Lone

Borrer

Lone

Owner.

Keping

Passe

for ỹ keping, but if he haue for ỹ keping & make promes at the time of the deliuerye to redelyuer them safe at his perill, than hee shall bee charged & al chaunces that may fall. But if he make the promise and haue nothing for keeping: I thynk he is bound to no such casualties, but that be wil full & his owen default, for that is a nude or a naked promise whereupon as I suppose no action lieth. Also if a manne fynde goods of another if they be after hurt or lost by wilful negligence, he shalbe charged to the owner, but if they bee loste by other casualtye as if they bee layde in a house ỹ by chaunce is burned, or if hee deliuer them to another to keepe that renneth away with them, I thinke hee bee discharged, & these diuersities hold most commonlye vppon pledges, or where a mā hireth goods of his neighbour to a certayne day for certain moneye, & many other diuersities be in the lawe of the realme what shalbee to the ieopardye of the one, & what of the other, whiche I wil not speake of at this time. And by thys it may appere that as it is commonly holden in the lawes of Englande yf a common carier goe by byewayes that bee daungerous for robbyng, or dryue by night or in other vnconuenient tyme & bee robbed, or if hee ouer charge a horse wherby he falleth into the water or otherwise, so that the stuffe is hurt or vnpeyred, ỹ he shall stande charged for his misdemeanour, & if he would percase refuse to cary it, onlesse promise were made vnto hym ỹ hee shall not be charged for no misdemeanour ỹ should be in hym, ỹ promyse were voyde. For it were against reaſo & against good maners

and

nud promiſs

goode found

pledges.

Hired

Caryage

promeſſ. void

and so it is in all other causes like. And all these diuersities be graunted by secondary conclusionz driued vpon the lawe of reason wout anye estatute made in that behalfe. And paraduenture lawes and the conclusions therein bee the moze playn and the moze open. For if any statut were made therein, I thinke verely mo douts & questions would rise vpon ỹ statute than doth now whan they bee onely argued & iudged after ỹ common lawe.

vpō reasō prodaxi

¶ If a prieſt haue wonne muche goodes by saying of maſſe, whether he may geue thoſe goodes oz make a will of them

The.xxxix.Chapter.

¶ In the saide ſūme called Sūma roſella in the title clericus quartus ỹ third article, is asked this queſtion if a prieſt haue won muche goodes by saying of maſſe whether hee maye geeue thoſe goodes oz make a will of them, whereto it is aūſwered there that hee maye geue them oz make a wil of thē ſpecially whā a mā bequeueth money for to haue maſſes ſaid for him, and ỹ like law is of ſuch things as a clarke winneth by ỹ reaſō of an office. For it is ſaid there ỹ ſuch thinges come to him by reaſō of his owen pſon, whiche sayings I thinke accord wt ỹ law of ỹ realme. But for aſmuch as in ỹ ſaid artiele & in diuers other places of the ſaide chapter, & in diuers other chappters of the ſaide ſūme is put gret diuerſity betweene ſuche goodes as a clarke hath by reaſon of hys

bequeth mpuet

Clarke in office

goodes of
ryngs not
liberally

church and ſuch goodes as hee hath by reaſon of his perſon, and ꝑ he muſt diſpoſe ſuche goodes as he hath by reaſon of his church in ſuch maner as is appointed by the laſwe of the churche, ſo ꝑ hee may not diſpoſe them ſo liberallye as he may the goods that come by reaſon of his owne perſone, therfore I ſhal a litle touch ſwhat ſpirituall men may doe with their goodes after the laſwe of the realme.

biſſh. goods

First a Biſhop of ſuche goodes as hee hathe with the Deane and the Chapiter hee may neyther make gift nor bequeſt, but of ſuche goodes as he hath of his owne by reaſon of his church or of the gift of his aunceſters or of anye other, or of his patrimony hee may both make giftes and bequeſts laſwfully. And an Abbot of the goods of hys church may make a gift & ꝑ gifte is good as to the laſwe. But ſwhat it is in conſcience ꝑ is after the cauſe & intent & qualitye of the gyfte for if it be ſo much ꝑ it notablye hurteth ꝑ houſe or the couent, or if he giue aſway the bookes, or ꝑ chalices, or ſuche other thinges as belonge to the ſeruice of god, hee offendethe in conſcience, & yet he is not puniſhable in the laſw, ne yet by a Sub pena after ſome men ne in none otherſwiſe but by the laſwe of the church as a ſwaſter of the goods of hys monaſterye. But neuertheleſſe I ſwil not fully holde ꝑ opinion as to that ꝑ belongeth neceſſarely to ꝑ ſeruice of god, whether anye remedy lie againſt him or not, but remit it to the iugement of other. And a Deane and a Chapiter and a maſter & brethren of goodes that theye haue to themſelfe. And alſo of goodes ꝑ they haue & the

Chapter

Chapter and brethrē the same diuersity holdeth as appeareth before of a Byshop and the Deane and chapter, except that in the case of a mayster & brethren the goodes shalbe ordered as shall bee assigned by the foundacion. And more ouer of a person of a churche vicar, and chauntry pryest, or such other, all such goodes as they haue, as wel such as they haue by reason of the personage. vicarage, or chauntry, as ẏ they haue by reason of their own person they maye lawfullye geue and bequeth where theye will after the comon lawe. And if they dispose part among their parishens, and part to ẏ building of churches, or geue parte to ẏ ordinary or to pore men, or in such other maner as is appointed by the lawe of the churche they offende not therein, onles they thinke themselfe bounden the to by duty & by auctority of ẏ lawe of the churche, not regardynge the kynges lawes, for if they doe so it seemeth they resist the ordinaunce of God, whiche hathe geeuen power to Prynces too make lawes. But there as the Pope hathe louereinty in temporall thinges as he hath in spirituall thinges, there some say that the goods of prieftes must in cōscience be disposed as is conteined in ẏ said sūme, but ẏ holdeth not in this realme, for ẏ goodes of spirituall men be tēporall in what maner soeuer they cōe to thē & must be ordered after the temporall law as the goods of the temporal men must be. Howbe it yf there were a statute made in thys case of lyke effect in many pointes, as the lawe of the churche is. I thinke it were a right good and a profytable statute.

maisterz

chauntry

pastor

goods of chirchmē

The. xl. Chapter.

Who shall succede a clarke that dyeth intestate.

The. xl. Chapter.

IN the saide summe called rosella in the Chaptre Clericus quartus the. vii. article, is asked thys question, who shal succede to a clarke that dieth intestate. And it is answered that in goods gotten by reason of the churche, the churche shall succeede. But in other goodes his kinsmen shall succede after the order of the lawe, and if there be not kinsmē than the church shall succede. And it is there said further ỹ goods gotten by a Canon seculer by reason of hys churche or prebend shall not go to his successour in the prebend but to the chaptre. But where one that is beneficed is not of the congregacion, but he hath a benefice clerely seperate, as if he be a person of a parish church or is a president, or an Archdeacon not beneficed by the chapter, than the goodes gotten by reason of his benefice, shall goe to hys successor and not to the Chapter, and none of these sayings holde place in the lawes of Englande. D. What is than the lawe if a person of a churche or a vycar in the cōtrey die intestate or if a Canon seculer be also a parson & haue goods by reason thereof & also by a prebend ỹ he hath in a cathedral churche & he die intestate who shal haue his goodes. S. At ỹ cōmon law ỹ ordinary in al these cases may administer the goodes and after he must commit administracion too the nexte faythfull frendes of

of him that is dead intestate that will desire it as hee is bound to doo. Where laye men that haue goodes dye intestate. And if noe man desire to haue administracion than the ordinary maye administer & see thee dets paid, & he must be ware ꝑ he paye the dets after such order as is appointed in ꝑ cõmon lawe, for if hee paye dets vppon simple contractes before an obligatiõ he shalbee cõpelled to paye the det vpon the obligacion of hys own goods yf there be not goodes sufficiente of hym that dyed intestate, & though it be suffred in such case that the ordinary may paye pounde and pounde like ꝑ is to appoꝛcion, ꝑ goodes amonge the dettours after his discrecion, yet by the rigoꝛ of the comon lawe he might bee charged to him ꝑ can first haue his iudgement against him. And farthermore by ꝑ is said afoꝛe as in the last chapiter appeareth if a Bishop ꝑ hath goods of his patrimony, oꝛ a maister of a college, oꝛ a Deane of goodes that they haue of their owne onely to themselfe die intestate, ꝑ the ordinary shal cõmit administraciõ therof as before appereth & if they make executours then the executours shall haue the ministracion thereof. But the heires noꝛ the kinsmen by that reason onely that they be heires oꝛ of kin to him that is decessed shal haue no medelyng with his goodes except it be by custom of some coũtreis where the heires shall haue theyꝛ lomes. Oꝛ where the childꝛen ꝑ dets & legacies paide, shal haue a reasonable parte of the goodes after the custome of the countrey.

administracio.

how to pay dets

1 retinant

obligato

pounde like

bysshop

Executt

vsus custom

2 Exinolomes

¶ Addicion.

The. xli. Chapter.

¶ If a man be outlawed of felony or be attainted for murder or felony, or that is an ascismus may bee slaine by euery strãger.

The. xli. Chapter.

Ascismus

It appeareth in ỹ saide summe called Summa Angelica in the. xxi. Chapter in the title of Ascismus the. ij. Paragraf, that he is an Ascismus ỹ will slay men for money at the instance of euery manne ỹ wyll moue him to it, and such a man may lawfully be slaine not onely by ỹ iudge, but by euery priuate person. But it is saide there in the fowerth Paragrafe, ỹ hee must first bee iudged by ỹ law as an Ascismus or he may be slain or his goods seysed. And it is sayde farther there in the. ij Paragraf, that also in conscience suche an Ascismus may be slaine if it bee done throughe a zele of iustice & els not. Is not ỹ law of ỹ realm likewise of men outlawed, adiured, or iudged for felonye.

felonye after ỹ deed

Fleet

S. In the law of the realme ther is no suche law ỹ a manne shalbe adiudged as an Ascismus ne if a man be in full purpose for a certaine sũme of money ỹ hee hath receiued to slay a man, yet it is no felony, ne murther in the law till he hath done the acte for intent in felonye nor murther is not punishable by ỹ common law of the realme though it bee deadly sinne before God, but in treson or in some other particuler cases by statute ỹ intent may bee punished. And though a man in such case kill a mã for money: yet hee shal not be attainted ỹ he is an Ascismus. For as it is saide

before

before: there is no such terme of Ascisms in the law of the realme but he shall in such case bee arraigned vpon the murther. And if he confesse it or pleade ỹ he is not guilty and is founde guilty by xij. men: he shal haue iudgement of life & of membre, & shal forfeit his landes and goodes. And like law is if in appeale brought of the murther hee stande dumbe and will not aunswere to the murther, he shalbe attainted of the murther, and shall forfeit life, landes, & goodes, but if he be arrayned of the murther vpon an inditement at the kings suit, & therupon standeth dombe and will not aunswere, there he shall not bee attainted of the murther, but he shall haue paine fort & dure (ỹ is to say) he shalbe pressed to death & hee shal there forfeit his goods, & not hys lãdes. But in none of these cases (ỹ is to say) though a man be outlawed for murther or felony, or be adiured or that he be otherwise attainted: yet it is not lawfull for any man to murther hym or slay hym, ne to put him in execution but by auctority of the kyngs laws. In so much ỹ if a mã be adiudged to haue paine fort and dure, & the officer beheadeth him, or on the contrary wise putteth hym to paine fort & dure, wher e hee should behead hym, he offendeth the law.

And if an officer which hath auctority to put a man to death (maye not put him to death but according to the iugement) thã me think it shold folow that more stronger a straunger maye not put such a mã to death of his owne auctority without commaundement of the law.

But if ỹ iudgement be that hee shalbe hanged in

not guilty

in chaines, and the officer hangeth him in other thinges and not in chaines, I suppose hee is not guilty of his death, but some say hes shal there make a fine to the kyng because hee hath not followed the wordes of the iudgement.

fine

Arrest

Also if a man that is no officer woulde arrest a man that is outlawed, abiured, or attainted of murther or felony as is aforesaid, & he disobeieth the rest, & by reason of ỹ disobedience he is slaine: I suppose the other shall not be empeched for his death, for it is lawefull vnto euerye man to take such persons and to bring them forth ỹ they may be ordered according to the lawe. But if a capias be directed vnto the sherif to take a man in an action of det or trespas: there no man maye take ỹ man but he haue authoritie from ỹ sherife. And if any man attempt of his own auctoritie to take him and he resisteth & in the resisting is slaine: he ỹ would haue taken him is guilty of his death.

Capias

ovono autoriti

¶ Addicion.

¶ whether a man shalbee bounden by the act or offence of his seruaunt or officer.

The.xlij. Chapter.

IN the sayde summe called Summa angelica, in the title dominus. iiij. Paragraf, Is asked thys question, whether a man shalbe charged for thys houshold. And it is saide there that hee shall

whan

whan the houshold offendeth in an office or ministrye that the maister is the chiefe officer of, & he hath the worke & the profit of the houshoide For it shalbe his default ỳ he would chose suche seruants, for he ought to appoint honest persõs, but it is said there, ỳ is to be vnderstand Ciuily and not criminally, whereby as is saide there he that is a gouernour is bounde for the offence of hys officers, and that the same is to be holden of a captaine, that he shall be bounde for the offence of his squiers. And an host for hys geste and such other. Neuertheles it is said there that certaine doctours there rehersed, & thereto that if the office bee an open or a publike office, as an office of power or other lyke: It suffyseth to bring forth him that offended. But it is otherwise. If it bee not a publike office, but an hoste or a tauerner or other like. But yf the houshoide offende not in ỳ office, the lorde is not bounde as to the law: but in cõscience, he is boũd if he were in default by not correcting them for he is bound to correct them both by worde & example, and yf he fynde any incorrigible he is bound to put him awaye except ỳ hee hath presumptions ỳ yf hee do so, he will be the worse, and than he maye doe that hee thinketh best, and hee is excused, and els not. For to suche parsons it is saide. Error qui nõ resistitur: approbatur (ỳ is to say) an error ỳ is not resisted is approued. And thoughe diuers of the sayings before rehersed agree wt the lawe of the realm, yet al do not so, & also they ỳ do, are to be obserued by auctorite of ỳ law of ỳ realme & not by the auctority alleged in ỳ said paragraf.

And

And therefore I intend to treat sōewhat where ye maister shalbe charged by his seruaunt or deputie, or by them ye be vnder him in anye office & where not, & than I entend to touche some other thinges where the maister after the lawes of the realme shalbe charged by the acte of his seruaunt in other cases not concerning offices, and where not.

First if a man bee committed to warde vppon arrerages of accompte, and the keeper of the prison suffreth him to go at large: than an accyon of det shall lie againste him. And if hee bee not sufficient, than it lieth against him ye committed the prison vnto him, and ye is by reason of the statute of westm the.ij.the.xi-chapter.

Also of Bailieses of frauncheses that haue returne of writs make a false return, ye party shal haue auerment against it as wel of to litle issues as of other thinges as well as hee shall haue against ye Sherife, but al the punishment shalbee onely vpon the baillife & not vpon the lord of the franchise, and ye doth appere by the statute made in the first yere of king Edward the.ij. the first chapter. But if an vnder sherife make a returne wherupon ye Sherife shalbe amercied there the high sherife shalbee amercied for the retourne is made expressely in his name. But if it bee a false returne wherupon an accion of disceit lieth in ye case it may be brought against ye vnder Sherife, & see therof the statut that is called statutum de male returnantibus breuia.

Also if the kynges butler make deputies hee shall aunswere for hys deputies as for hym selfe

As

As appeareth in the ſtatut made in the.xxv. yere of king Edward the thirde. De prodicionibus the.xxi. Chapter.

Alſo in the ſtatut ꝑ is called Statutum ſcaccarii, it is enacted amonge other thinges that no officer of the eſcheker ſhall put any clarke vnder him but ſuch as he will aunſwer for. And for as muche as ꝑ ſtatute is generall: it ſeemeth that he ſhal anſwere as wel for an vntrouth in any ſuch clarke as for an ouerſight.

officeres de

for

Alſo in the.xiiij yere of kinge Edward the iij. the.ix. Chapiter, it is enacted ꝑ all Gailes ſhal be appointed again to the ſhires, and ꝑ the Shirife ſhall haue the keping of them, and that the Shirife ſhall make ſuch vndergardeins for the which they will aunſwere. And neuertheleſſe I ſuppoſe ꝑ if there be an eſcape by defaulte of the Gailer, ꝑ the king may charge ꝑ Gailer yf hee will. But it is no doubt but hee maye charge the Shyryfe by reaſon of his ſtatute if he will. But if it be a wilful eſcape in the Gailer which is felony in him the Sherife ſhal not be bound to anſwere to ꝑ felony ne none other but ꝑ Gailer himſelfe and they ꝑ aſſented to him.

gayler or sh

Eſcape

felonie

Alſo if a man haue a Shirifewike, conſtableſhip or Wallywike in fee, whereby he hath ꝑ keping of priſoners, if he let anye to repleuin ꝑ bee not repleniſhable and therof be attaint, hee ſhall leſe ꝑ office ꝛc. And if it bee an vndershyrife, cõſtable, or Wailife ꝑ hath the keping of the priſon that doth it without knowledge of the lorde hee ſhall haue impriſonment by.iij.yeares, and after ſhall be raunſomed at the kinges will, as appeareth

wrongfully

attaint

3. yeres.

raunsom

prison reth in the statute of westm̃ the first the.xv. chapter. And so it appeareth ꝑ in this case hee that is the lord of the prison is not bounde to aunswere for the offence of them that haue the rule of the prison vnder him, but that they shal haue the punishment themselfe for theire mysdemeanour.

misdemanors.

Also there is a statute made in the.xxvii.yere of king Edward the.iii.the.xix.chapter, ꝑ is called the statute of the staple, whereby it is ordeyned ꝑ no marchant ne none other man shall not lese their goods for the treſpas or forfait of theire seruaunts, onelesse it be by commaundemẽt of his maister, or that hee offende in the office that hys maister hath put him in, or els that the maister shall bee bounde to an aũswer for the dede of his seruaunt by the law marchaunt as in some place it is vsed.

marchant staple

1
2
3

Also it is enacted in the.xiiii. yeare of kynge Edwarde the.iii the.viii.Chapter that wapentakes and hundredes that bee seuered from the counties shalbe adioined againe vnto them, and that if the sherife holde them in his owne handes that he shal put in theim suche Bailifs that haue landes sufficient, and for ꝑ whiche hee wil aunswer, and ꝑ if hee let them to ferme, that they be let to the auncient ferme, but after it is prohibited by the statute of the.xxiii yere of king Hẽrye the.vi.the.x. Chapiter. That no sherife shall let his Bailiwykes nor wapentakes to ferme.

wapentak

Auncient ferme

And whan theye bee once in the Shirifes owne handes and the sherifes putteth in Bailyfs, they bee but as vnder bailifes to the kynge & the sherife the high bailife & they in maner ꝑ sheryefes seruants

Sh. balifes

Eight Baliffe

seruaunts & put in oneiye by him. And therfore by ẏ said statute of king Edward ẏ. iij. he shall answer for them if they offend in their office, but if the sherife let them to ferme: then thoughe the sherife offend the statute in that doing: yet whether hee shalbee charged for their misdemeanour in the office or not, is a great dout to some mẽ, for they say ẏ this statut is oneiy to bee vnderstande where the bailiwikes bee in the sherifes handes but here they be not so, ne the bailifes be not hys seruaunts but his fermours. And therefore they saye that if the sherife shalbee charged for thẽ: It is by the cõmon law & not by ẏ statut aforesaide.

Also in the. ij. yeare of king Henrye the. vi. the xiiij. chapter it is enacted ẏ officers by patent in euerye court of the kinge that by vertue of theire office haue power to make clarkes in the sayde courtes shalbe charged & sworne to make soche clarkes vnder thẽ for whom they will answere.

Also ẏ Hospitalers, & templers be prhibit they shall hold no plee that belongeth to the kynges courtes vpon paine to yelde damages to ẏ party greued & to make raunsome to the king that the superiours shal answer for theire obediences as for their owne dede, westm. the. ij. ẏ xliij. chapter.

Also the sergeãt of ẏ Catery shal satisfy al the dets, damages, & execucions that shall be recouered agaynste anye that is purueiour or achatoure vnder him and that offende agaynste the statut of xxvij. of Ed. the iij. or againste thys statute of. xxiiij. of Henry the. vi. In case the purueiour or achatour bee not sufficient &c. And the partye plaintife shall haue a scire facias against the saide sergeãt

misdo
mbrs
fermor
office
by patẽt
Clerks
Hosp. Fol
maſon
sergeat cate
Catery
purueyor

sergeaunt in thys case to haue execucion as appeareth in the.xxiij.yeare of kyng Henry the.vi. the.i.chapter.

maiors gaild

Also if a manne be sent to prison vpon a statut marchaunt by the Maire, before whom ꝧ recognisaunce was taken, and the Gaiter will not receiue him, he shal aunswer for the det if hee haue wherewith, and if not than hee shal aunswere ꝧ committed the Gaiter to him as appeareth in ꝧ statut called the statut marchaunt.

monsel

Also if outragious tolle be taken in the towne marchant, if it bee ꝧ kynges towne let to ferme, the kyng shall take the fraunchise of the market into his handes. And if it be done by the lorde of the towne: the kynge shall do in likewise. And if it be done by the Bailife vnknowing the lord, he shal pesde againe as much as he hath taken, and shal haue imprisōmēt of xl. daies. And so yt appeareth ꝧ the Lord in thys case shall not aūswer for his Bailif westm̄ the.i. the.xxx.chapter. And in all the cases before rehersed where the superiour is charged by the default of hym that is vnder hym, hee in whose default his superior ys so charged, is bounde in conscience to restore hym that is so charged throughe his default. Excepte the case before rehearsed of the hospitelers, for all that the obediencer hathe, is the superiours if he wil take it. And therefore what recompence shall bee made by the obediencer in ꝧ case, is all at the will of ꝧ superiour. And nowe I entend to shew thee some particuler cases, where ꝧ master after ꝧ lawes of the realme shal bee charged by the act of his seruaunt, Bailife, or deputie, &

tolle

superiors fault

restore

obediencer

where

where not, and so for to make an ende of this Chapiter.

¶ First for trespas of batery or wrongfull entre into landes or tenementes, nt yet for Felonye or murther, the maister shall not be charged for his seruaunte, vnlesse hee did it by hys commaundement. m^r for his seruant.

¶ Also if a seruant borowe money in hys maisters name: the maister shal not be charged with it, vnlesse it come to his vse, and that by hys assent, and the same lawe is if the seruant make a contracte in his maisters name, the contracte shall not bynd his maister, vnlesse it were by his maisters commaundement, or that it came to the maisters vse by his assent. But if a manne sende his seruaunt to a faire or market to buy for him certain thinges, thoughe hee commaunde hym not to bye them of no man in certayne: and the seruaunt dothe accordynge, the maister shalbee chatged but if the seruaunt in that case buy thē in his owne name not speaking of his maister, ỹ maister shall not bee charged vnlesse the thinges bought come to his vse. maisters seruant borowing vse seruant byinge

¶ Also if a man sende his seruaunt to the market with a thinge which he knoweth to bee deceitfull to bee solde to a certaine man and hee selleth it to him: there an accion lyeth againste the maister, but if the maister biddeth him not sell it to any person in certaine, but generally to whōe he can. And he selleth it accordyng, there lyeth no accion of disceit against the maister. m^r desertino deceyt m^r

¶ Also if the seruaunte keepe the maisters fyre negligently, wherby his maisters house is brent

and his neighbours also, there an accion lyeth against the maister. But if the seruant beare fyre negligently in the strete, and thereby the house of an other is burned, there lieth no accion againste the maister.

Also if a man desire to lodge with one that ys no common hosteler, and one that is seruaunt to hym that he lodgeth with: robbeth his chamber, his maister shal not be charged for that robbyng, but if he had bene a common hostiler, he shoulde haue bene charged.

Also if a man be gardeine of a prison wherin is a man that is condempned in a certain summe of money, and an other that is in prison for felonye, and a seruaunt of the gardein that hath the rule of the prison vnder him, wilfullye letteth them both escape, in this case the gardeine shal answer for the det, and shall paye a fine for the escape of the other, as for a necligent escape, and the seruaunt only shalbe put to answere to the felony for the wilful escape.

Also if a man make another his generall receiuoure, and that receiuoure receyueth money of a creditoure of hys maister, and maketh hym acquitaunce and after paieth not his maister yet that payment dischargeth the creditoure, but yf the creditoure had taken an acquitaunce of hym without paying hym his money, that acquitance only were no barre to ȳ maister, vnlesse he made him receiuour by writing, and gaue him auctoritie to make acquitaunces, and then the auctoritie must bee shewed. And if the creditoure in suche case by agreement betwene the receiuour

and

and him, deliuered to the receiuoure a horse or an other thing in recompence of the dette, that deliuery dischargeth not the creditour, vnlesse it be deliuered ouer vnto the maister, and hee agree to it. For the receiuour hathe no sucht power to make no such commutaciō, but his maister geue him special commaundement therto.

Also if a seruant shew a Creditour of his maister that his maister sent him for his money and he payeth it vnto him, that paiment dischargeth him not if the maister did not sende him for it in dede, except that it come after vnto the vse of the maister by his assent.

Also if a manne make a baylife of a maner and after the lorde of whom ꝧ maner is holden graūted the seignory to another, and the baylife after payeth the rent to the graunte, ꝧ payment of the rent counteruaileth no attournament though yt were by fine, ne shall not bynde his Maister, till hee atturne him selfe, but if the lorde of whome the lande is holden be diseased of the seignorye, & the bailife payeth the rent to the heire of ꝧ lorde: ꝧ is a good season to the heire thoughe ꝧ baylife had no commaundement of his maister to pay it. For it belongeth to his office to pay rents seruices but not rent charge as some men saye.

Also an encrochement by the bailife shall not bynd ꝧ maister in auowry if he had no cōmaundement of the maister to pay it. Also if there bee Lorde, Meane, and tenant, & the tenant holdeth of the Meane as of his maner of D. the Meane maketh a baylife. And after the tenaunt maketh a feoffemēt, the feoffe tendeth notice to ꝧ baylife

and hee accepteth his rent & the arrerages, thys notice shal not bynde the lorde ne compell him to alter his auowry, for the office of a baylif stretcheth not therto but he must haue therein a speciall commaundement of his maister.

¶ Also if a seruaunt ryde on his maisters horse to doe an erraunt for his maister into a Towne that hath aucthoritie to make attachementes of goodes vppon plaintes of det. &c. and there vpon a plaint of dette made againste the seruaunt, the maisters horse is attached by the officers thynkynge that the horse were his owne, and because the seruaunt appeareth not, the officers sease the horse as forfeite, in this case the lorde shall haue an accion of trespas againste the officers, & thys attachement for the det of his seruaunt shall not binde him &c. but that an host or a keeper of a taucrne shalbe charged for their gestes vnlesse it be done by their assent or commaundement. I doe not remember that I haue reade it in the lawes of Englande.

¶ Addicion.

¶ whether a villeine or a bonde man may geeue away his goods.

¶ The.xliii. Chapter.

IT appeareth in the sayde summe called Sūma angelica in the title donacio prima the.ix. Paragrafe, that a bond manne nor a religious manne, nor a Monke, ne such other that hath nothynge in proper maye not geeue but it bee by lycence of their superioure, but that sayinge is not as yt is

saide

religious gyfte

ſaide, there to bee vnderſtande of Religious par-
ſons that haue lawful miniſtracion of goods, for
if they geue with a cauſe reaſonable, it is good,
but without cauſe they may not.

Scholers pilgrims

¶ Alſo if they by ẏ licence of the Prelate wyth
the counſaile of the more parte of the couente a-
byde at ſchole or go on pilgrimage: they mai geue
as other honeſt ſcholers and pilgrymes be reaſo-
nably wont to do, and they may alſo geeue almes
where there is great neede, if they haue no tyme
to aſke lycence.

almes Comon

¶ Alſo if they ſee one in extreme neceſſitie theye
may geue almes though their ſuperiours prohi-
bite them, for than all thinges be in common by
ẏ law of God. And therefore they be bounde for
to do it, as appeareth in the aforeſaid ſumme cal-
led Summa angelica in the title Elemoſina, the
vi. Paragrafe. Doth not the lawe of Englande
agree wyth theſe diuerſities. S. For as
muche as the queſtion is onelye made whether a
pilleine or a bonde manne may geue awaye hys
goodes or not. And it ſeemeth that after the fore-
ſayde Summe, in the title whiche thou haſt be-
fore rehearſed, that hee ne none other that hathe
no propertye may not geue, whereby it appereth
that the ſayde Summe taketh it ẏ a bonde man
ſhould haue no property in his goods, ẏ ẏ there-
fore his gift ſhould be voide. I ſhal ſomewhat
touche what propertye and what auctoritie a
villaine hath in his goodes after the lawe of the
Realme, and what auctoritie the Lorde hathe o-
uer them. And I will leaue the diuerſities that
thou haſte remembred beefore of religious par-

villens

gyfte void

sones to them that liste to treate further therein hereafter.

villens ppties

Firste if a villaine haue goodes eyther by hys owne proper bying and selling, or otherwise by ỹ gift of other men, hee hath as perfit a propertye, and also as whole interest in them, and may as lawfully geue them away as any free man hath may. But if the lordes sease them before his gift: then they be the lordes, and the interest of ỹ villaine therin is determined.

villens possessio

Also if the Lorde sease parte of the goodes of hys Villayne in the name of all, the goodes that the Villeyne hathe, or shall hereafter haue, that seasure is good, for all the goodes that hee hadde at that tyme, thoughe they were not there present at th it tyme of the seasure. But if goodes come to the Villeine after the seasure hee maye lawfullye geue them awaye notwithstandinge ỹ saide seasure.

possessio bonorum

Also if the Lorde claime all the goodes of the villein, and seaseth no parte of them, that seasure is voide, and the gift of the villeine is good, not withstanding that seasure.

obligatio

Also if a manne bee bounde to a villeine in an Obligacion in a certain summe of money. and the lorde seaseth the obligacion, then the obligacyon is his, but yet he can take no accion thereuppon but in the name of the villeine, and therefore yf the villeine release the det, the lorde is barred by that release.

release

Also if a woman be a nicke, and shee maryeth a free man, ỹ goodes immediatlye by the mariage be the husbandes, and the lord shal come to late,

to

woman nisse maried

to make anye seasure, and if the husbande in that case maketh his wife his executrix and dieth, & the wife taketh the same goods againe as executrix to her husbande, yet it shall not bee lawfull for the lorde to take them from her, though shee be a nieke as she was before the mariage.

Also if goodes be geeuen to a manne to the vse of a villaine, and the lorde seaseth those goodes ỹ seasure after some menne is good by the statute made in the.xix.yere of king Henry the seuenthe whereby it is enacted that the Lorde shall enter into landes wherof other psons bee seased to the vse of his villeine and they say ỹ the same statut shalbe vnderstande by equitie of goods in vse, as well as of landes in vse.

Also if a villeine be made a prieste, yet neuertheleste the lorde may sease his goods and landes as he might before. And vntill the seses he maye alien them and geue them away as he might before he was prieste. And in this case the Lorde may order him, so that he shal doe him suche seruice as belongeth to a priest to dooe, before anye other but he may not put him to no laboure nor other busines but that is honest and lawfull for a priest to dooe.

Also yf a villeine enter into Religion in hys yere of prouse, he may dispose his goodes as hee might haue done before he toke the habite vppon hym. And in likewise the Lorde maye seale hys goodes as he might haue don before, but if he after make executours, & be pfessed, And ỹ executoures take the goodes to the perfourmaunce of

the will, then the lorde may not seyse the goodes though the executours haue them to the performance of the will of him that is his villaine, nor in that case the lorde may not sease his bodye ne put him to no maner of laboure, but muste suffer him to abyde in his religion vnder the obedience of his superiour as other religious parsones doe that bee not bondmen. And the lorde hath no remedy in that case for losse of his bondmanne but onely to take an accion of trespasse agaynste hym that receiued him into religion wythout hys licence, and therupon to recouer damages as shal be assessed by xii men. Many other cases ther be concerning the guyft of the goodes of a villeine wherefore I will speake no more at this tyme, for this that I haue sayde suffyseth to shewe ỹ the knowledge of the kinges lawe ys right expedient to the good order of conscience concernyng suche goodes.

¶ If a clarke be promoted to the tytle of his patrimonye and after selleth his patrimonye and after falleth to pouertie whether shal he haue his title therin or not.

¶ The xliiii. Chapter.

In the sayde summe called Rosella in the tytle Clericus quartus, the xxiiii. article it ys asked if a Clarke bee promoted to the title of hys patrimony, whether hee maye alene it at his pleasure, and whether in that alienaciō the solempnitye neadeth to bee kept ỹ is to bee kept in alienacion

nacion of thinges of the churche, and it is aun-
swered there that it may not bee alienede no more
then the goodes of a spirituall benefice yf it bee
accepted for a tytle, and expresselye assigned vnto
hym, so that it shoulde go as into a thinge of the
churche, excepte hee haue after an other benefice
wherof he may liue. But if it be secretely assig-
ned to his title, some agree it may be alienede, and
in this case by the lawes of the Realme it maye
bee lawfully alienede whether it bee secretelye or
openlye assigned to hys tytle, for the ordinarye
ne yet ỹ partie him selfe after the olde custões of
the realme haue no auctoritie to bynde anye in-
heritaunce by auctoritie of the spirituall lawe,
and therefore the land after it is assigned and ac-
cepted to bee hys tytle, standeth in the same selfe
case to be bought, solde, charged, or put in execu-
cion as it did before. And therfore it is somwhat
to be marueiled that ordinaries wyll admit such
lande for a title, to the intent that he that is pro-
moted should not fall to extreme pouertie, or goe
openly a begging, wythout knowinge howe the
cõmon law will serue therein, for of meere ryghte
all inheritaunce within this realme aught to bee
ordered by the kinges lawes, and inheritaunce
cannot bee bounden in thys realme but by fyne,
or some other matter of recorde, or by feoffement
or suche other, or at least by a bargayne ỹ chaun-
geth an vse. And ouer that to assigne a state for
tearme of lyfe to him that hathe a fee simple be-
fore is voide in the lawes of Englande, wyth-
out it be by such a matter that it worke by waie
of conclusion or estoppell, and in thys case is no

suche

tytle

bonofyce

ordinary

handled
Exemion

pouerty

ĩheritaũ

fyne

bargaĩ

vse

Estopell

suche maner of conclusion, and therefore all that is don in such case in assigning of the said title is voide. Also there is no interest that a man hathe in anye maner landes or tenementes for terme of lyfe, for tearme of yeares or otherwise, but that he by the lawe of the realme may put awaye hys right therein if he will. And then when this mā alieneth hys lande generallye, it were againste the law of the realme that anye interest of such a title shoulde remaine in him againste hys owne sale, and there is no diuersity whether ẏ assigne= ment of the title were open or secrete, and so the title is voide to all intentes. And in lykewyse if a house of Religion or anye other spirituall man that hath graunted a title after the custome vsed in suche titles sell all the landes and goodes that they haue that sale in the lawes of Englād is good as againſt ẏ title, and the buyer shall ne= uer be put to aunswere to the tytle. Also some saye that vpon the common titles that bee made dayelye in suche case that if hee fall to pouertye that hath the tytle, hee is without remedye, for they be so made that at ẏ common Law there ys no remedy for them, and if hee take a suite in the spirituall court many men say that a prohibicion or a premunire lyeth. And therfore it were good for ordinaries in suche case to counsaile wᵗ them that bee learned in the lawe of the realm to haue such a forme deuised for ‖ making of suche tytles, that if neade be woulde serue them that they bee made vnto, or els let them be promoted wythout any title, and to truste in God that if they serue hym as they ought to do hee wil prouide for thē

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to haue ſufficient for them to liue vpon. And beſyde theſe caſes ẏ I haue remẽbred before, there be many other caſes put in the ſaide ſummes for the well ordering of conſcience, that as me thinketh are not to bee obſerued in this realme neyther in law nor in conſcience.

D. Doeſt thou then think ẏ there was defaulte in them ẏ drewe the ſaid ſummes and put therin ſuch caſes and ſuch ſolutions ẏ as thou thinkeſt hurt conſcience, rather then to geue anye light to it, ſpecially as in this realme.

S. I thinke no default in them, but I thinke ẏ they were right well and charitably occupied to take ſo great paine and laboure as they dyd ther in for the wealthe of the people and clearinge of theire conſcience, for they haue thereby geeuen a right greate light in conſcience to al countreyes, where the lawe Ciuile and the lawe Canon bee vſed to tempozall thinges. But as for the lawes of this realme they knewe thẽ not ne they were not bounde to knowe them, and if they had knowen them it would little haue holpen thẽ for the countreis ẏ they moſt ſpecially made their treatices for, and in this countrey alſo they be righte neceſſarye and muche profitable to all menne for ſuch doubtes as riſe in conſcience in diuers other maners not concerning the law of the realme.

And I marualle greatly that none of them that in this Realme are moſte bounden to dooe that in them is to keepe the people in a ryghte iudgement, and in a clearenelle of Conſcyence: haue doone no more in tyme paſte to haue the Lawe of the Realme knowen, than they haue doone for

Excuse ignorance

for though ignorance maye sometime excuse yet the knowledge of the truthe, and the true iudgement is muche better, & sometime thoughe ignorance excuseth in parte, it excuseth not in all, and therefore me thinketh they did very well if they would yet bee callers on to haue that poynte reformed as shortly as they coulde. And nowe because thou hast well satisfied my mynde in many of these questions that I haue made: I purpose for this tyme to make an ende. D. I pray the yet shew me ere that thou make an ende of the cases that after thine opinion be set in diuers bookes for clearinge of conscience, that as thou thinkest for lacke of knowledge of the lawe of the realme doe rather blynde Conscience than geue a light vnto it, for if it be so then surely as thou hast sayd it would be reformed, for I think verely the lawes of the Realme in manye cases muste in this realme be obserued as wel in conscience as in the iudiciall courtes of the realme.

Constrip

indiciall

H. I wyll wyth good wyll shew to thee shortly some other Questions that be made in the sayde summe to geue thee & other occasion to see therein the opinions of the sayde summes, and to see farther therupon how the oppinions and the lawes of the realme doe agree together. And yet beside these Questions that I entende to shewe vnto thee, there bee many other questions in the sayd summes that had as great neede to be moze plainlye declared accordynge to the lawes of the realme as those that I shall shewe the hereafter or as I haue spoken of before, but to the cases & I shall speake of hereafter I wil shew thee nothing

thing of my conceite in them, but will leaue it to other that wyll of charitie take soe further paine hereafter in that behalfe.

¶ Dyuers questions taken out by the Student of the Summes called Summa Rosella, and Summa Angelica, whych he thinketh necessarye to be loked vpon, & to be seene how they stand and agree with the lawe of the realme.

¶ The.xlv.Chapter.

Custome positiue

THE first Question is this, whether a custome maye breake a lawe positiue. Summa rosella, titulo consuetudo. Paragrafe.xiii.

banished restored

The seconde is if a man attainted or banished be restored by the prince, whether shall that restitucion streatch to the goodes Summa rosella in the title Dampnatus in principio.

outlawe Asciimus

Item if a man be outlawed of felony, abiured or attainted of murder or felony, or he that is an asciimus may be slaine by estraungers & see lyke matter thereto, Summa angelica, in the tytle Asciimus. Para. ii.

This question is somewhat answered to in a newe addicion as appeareth beefore in the.xli. Chapter.

m. stat

Item whether the maister shalbee bounde by the acte or offence of his seruāt or officer Summa

ma angelica in the title dominus. Para. iiii.

This question is aunswered to in a new addicion, as appeareth before in the xlii. chapiter.

villono

Item whether a villeine may geue away hys goodes, Summa Angelica, in the title donacio prima. Para. ix.

This question is answered to in a new addycion, as appeareth before in the. xliii chapter.

Item whether an Abbot may giue &c. Sūma Angelica, in ỳ title donatio. i. Para. x. & .xxxix.

woman gone goodes dowri

Item whether a woman couert may geue away any good, and it is answered, Summa angelica, in the title donacio. i. Paragrafe. xi. ỳ shee may not bout she haue goods beside her dowrye but onely in almes.

goodes after attainder

Item if a man do treason whether his gyfte of goodes after before attainder be good, Summa angelica, in the title donacio. i. Para. xii. & it seemeth there naye, and looke Summa angelica, in the title alienacio. Para. xxiiii

forfeit goodes

Item if a man wittingly make a contracte betwene two kinsfolke, or other that may not lawfully marye together, whether he hath forfeit his goods, Summa angelica, in the title donacio. i. Paragrafe. xiii.

fathers & sons

Item whether the father maye geue to ỳ sonne Summa Angelica, in the title donacio. i. Para. xix. and Summa roselia, in the title donatio. ii. Paragrafe. xlii.

Item whether a man maye geue aboue. v. c. s. absque insinuacione Summa angelica, in ỳ tytle donacio prima. Paragrafe. xx.

Item whether a gyfte shall bee auoyded by an in-

gyfte. unexecuted.

ingratitude, Summa roſcila, in the tytle donacio i. Paragrafe. xvii. & xxix. and there it is ſayd that the gift is voide by the laſwe of nature, and looke Summa Angelica, in the title donacio prima. Para. xlii. and. xlv.

Item whether any gyft betwene the huſband and the wife may be good, and it is ſaid yea whē the huſbande geeueth it, cauſa remuneracionis, Summa roſcila, in the title donatio. i. Paragraf xxxii.

Item if a man make a will and enter into religion whether he may after reuoke the will and it is ſaid that Fryers minoures may not, and other maye, Summa roſcila, in the tytle donacio prima Paragrafe. xxxv. in fine.

Item if a man geue another a towne with al the rightes that he hath in the ſame whether the patronage &c. & the tithes paſſe. Summa roſcila in the title ecclesia. i. Para. lvi.

Item whether al that is bought with the money of the church be the churches. Summa roſcila, in the title eccleſia. i. Para. vii.

Item if a gift made to a monaſterie may be auoided by that the geeuer hath children after the guifte, Summa Angelica, in the title donacio. i. Paragrafe. xliii.

Item if a manne bye a thinge vnder the halfe price, whether he be bounde by the Laſwe to reſtore &c. Summa roſcila, in the title empcio and vendicio. Para. vi.

Item whether a common thiefe vel cōmunis depopulator agrorum may abiure. Summa roſcila, in the title emunitas. ii. in principio. Et habe-

bet ibi in fine quod licet leges excipiãt plures p=
sonas tñn ꝑius canonicꝭ legib⁹ derogat̃ est.

Item whether a man shal take the church for
great enormious offences ꝙ is not murther nor
felonye Summa Roscella, in the title Emunitas
ii Paragrafe iii.xi.

Item if a man take one in the highe waye and
draw him out and there beateth him, whether he
shal haue punishement ꝙ is ordained for them ꝙ
strike one in the high way. Summa Roscella, in
the title emunitas.ii.Paragraf.vi.

Item whether he ꝙ taketh ꝙ church may after
for ꝙ offẽce be iudged to death. Summa roscella,
in the title Emunitas ii.Paragrafe.viii.

Item whether the Bishops paleys be sanctu=
ary. Summa roscella, in the title Emunitas.ii,
Paragrafe.xviii.

Item whether the dignitie of the Bishoppe or
priesthode discharged bendage, Summa roscella
in the titles episcopus in principio.

Item whether a clarke is bound to paye anye
impositions or tallages for his patrimonye or o=
therwise, Summa roscella, in the tytle excommu=
nicacio.i.diuisione octa.Para iiii.and.v and.vi.
and diuisione nona.Paragrafe.i

Item if it were ordeined by statute that if a
man sell &c. hee shall geue to the kyng ii.d. whe=
ther a clarke bee bound to geue it if he sell of his
prebende, Summa roscella, in ꝙ title excommuni=
cacion.i.diuisionc nona.Para.iii.

Item if it bee ordeined by statute that there
shal not be layde vppon a deade parson but suche
a certeine clothe, or thus manye tapers or can=
dels

Clothes on ꝙ dead.

dels, whether the statute be good & it is left for a questiō. Summa rosella in the title excommunicacio.i.diuisione. xviij. Parra. viij. in fine.

Item if a man make a lease of a mill for terme of yeares & it is agreed ꝑ the lesse shal grind ꝑ lessour tolle free during the terme after ꝑ lessour is made an Erle or a Duke & hath greter household than before, whether ꝑ lesse be bound thereto &c. Summa rosella in the title familia. Para. v.

Item yf a maister wyl not paye his seruaunts wages that hath serued him faithfully whether ꝑ the seruant may take secretly as much goodes of ꝑ masters &c. and if he do whether he be bound to restitucion. Sūma rosella in the title familia Para. vi.

Itē things immouable of ꝑ Church may not be geuen. Sūma rosella in ꝑ title of feodū. Paragraf. i. & see there in principio what feodum is.

Item whether the sonnes bastardes and the sonnes lawfully begotten shal inherite together Summa rosella in the title filius Para. i.

Item wheather father and mother maye succeede to their bastardes. Summa rosella in ꝑ title filius Para. iiij.

Item whether the father may leaue any of his goods to his bastardes. Summa rosella in the tytle filius Paragraf. v. and Summa rosella in ꝑ title societas. Para. xxiij.

Item whether the offence of the father shall hurt the sonne in temporal things. Summa rosella in the title filius.

Item yf a manne geue all hys landes and goodes to his childzen, wheather a bastarde shal

T.i. haue

haue any part. Summa roſella in the title ſilius Paragraf.xxij.

Itē to whom treaſour found belongeth, Summa roſella in the title furtum. Para.xi.

Itē if a dere or other wild beaſt that is ſo ſore hurt ꝑ he maye be taken commeth into an other mans groūd, whether it be his ꝑ oweth ꝑ groūd or his that ſtrake him. Summa roſella in the title furtum. Para.xiij.

Item whether theft be in a litle thing as well as in a great thinge, Summa roſella in the title furtū. Pa.xviii.

Item what paine a theſe ſhal haue. Sūma roſella in the title furtū. Para.xxii.

Item the goodes of dead men go to the heires and that of damned men. s. De terris, Summa roſella in the title hereditas, Pa.i.

Item whether a man ſhal bee ſaide guiltye of murther by commaundement counſaile or aſſent ſumma roſella in the title homicidium. ii. per totum, and like matter is homicidium. iiii. in principio and diuers other caſes.

Item a man maketh a priuy contracte withe a woman and after hath a childe by her: and after maryed another woman and hathe a chylde, ſhee not knowinge of the firſt contract whiche of the children ſhalbe his heire. Sūma roſella in the title Illegitimus. Pa.iiii.

Item whether the Pope maye legitimate one to temporal things and to ſucceede. Summa roſella in the title Illegitimus. Pa.xxv.

Item if goodes be found that were left of the owner as forſakē who hath right to them, Sū-

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ma roſella in the title inuenta. Para ij. And loke ſumma roſella in the title furtum Pa.xvij. And thus I make an end of theſe queſtions, & becauſe thou deſiredſt me in the.xxxi. Chap. to ſhew thee ſomwhat where ignorauncē excuſeth in the lawe of the realme and where not, I wil anſwer ſome what to thy queſtion & ſo cōmit thee to God.

Where ignorance of the law excuſeth in ye lawes of Englande and where not.

The.xlvi.Chapter.

IGnorāce in ye law though it be inuincible dothe not excuſe as to the law but in few caſes, for euery mā is boūd at his peril to take knowledge what ye law of ye realme is, aſwell the lawe made by ſtatut as ye cōmō law, but ignorāce of ye dede which may be called ye ignorāce of ye truth of the dede may excuſe in many caſes. D. I put caſe ye a ſtatut penall be made & it is enacted ye the ſtatute ſhal be pclaimed before ſuch a day in euery ſhire & it is not pclaimed before ye day, & after ye day a mā offēdeth againſt ye ſtatut ſhal be ren in the penalty. S. I think ye, if there be no farther words in ye ſtatut to help him, ye is to ſay, ye if ye pclamation be not made ye no man ſhalbe bounde by the ſtatut, & ye cauſe is this, ther is no ſtatut made in this realme but by ye aſſent of ye lordes ſpirytual & tempoꝛal & of al the commonꝛ, ye is to ſay by the knights of ye ſhire citezens & Burgeſes that bee choſen by aſſent of the commons, which in ye parliament repꝛeſent the eſtate of the whole cōmōs.

Ignorāce

knowlege at ye ſtatut

ſtatut pclamed

after pclamed Comons.

And euery statute there made is of as strong effect in the law, as if all the commons were there present personally at the making therof, and lyke as there needed no proclamacion if al were there present in their owne parson, so the lawe presumeth, there needeth no proclamation whan it is made by their auctozitie, & than whan it is enacted that it shalbe proclaimed &c. that is but of the fauour of the makers of the statut and not of necessitie, and it cannot therfoze be taken that their intent was that it shoulde be voide if it were not proclaimed. Neuertheiesse some bee of opinion that if a manne befoze the daye appointed foz the proclamacion offend that statute ỹ he should not in that case be punished, foz they say ỹ the intent of the makers of the statute shalbe taken to bee that none should be punished befoze ỹ day, which is a doubt to some other, but admyt it be as they say that he shal bee excused, yet he is not excused by the ignozaunce of the law, but because ỹ intent of the makers excused him. D. It is enacted in the vij. yere of kyng Richarde the seconde the. vi. Chapter ỹ euery Sherife shall proclaime the statute of wyncheſter thzee times euery yere in euery market towne to the intent ỹ offenders shall not be excused by ignozaunce, & it seemethe by those wozdes that if no proclamacion be made that the offendour may be excused by ignozance. S. Some take the entent of that statute to bee that the people by that proclamacion should haue knoweledge of that statute of wyncheſter to the intente that the forfaiture therein may bee taken as well in conscience as in lawe, and some take

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the statute to be of such effect as thou speakest of that is to saye, that no forfayture shoulde growe vppon the statute of wincheſter againſt them ꝑ were ignorant but proclamacion were made accordyng to the saide statute of Richarde. And yf it be so taken the statut of wincheſter is of smale effect againſt moſte part of the people, for certain it is that the saide proclamacion is not made, but admit it be as they say, then they ꝑ be ignorant bee excused by the saide particuler statute specyally made in that case & not by the general rules of the lawe, and sometime in diuers statutes penalles they that be ignorant be excused by the selfe statut as it is vpon the statute of Richarde the. ij. the. xiij. yeare, the seconde statute and the laſte Chapter wher it is enacted that if any parſon take a benefice by prouiſiõ ꝑ hee shall bee baniſhed the realme and forfeit al his goodes, and ꝑ if hee be in the realme, hee auoyde wythin. vi. wekes after he hathe accepted it, and that none shall receiue him ꝑ is so baniſhed after the saide vi. wekes vpon like forfaiture if he haue knowledge, and so hee ꝑ hathe no knowledge is excuſed by the expreſſe wordes of the statute. And in likewiſe hee ꝑ offendeth againſt Magna charta is not excõmenged but he haue knoweledge that it is prohibite ꝑ he dothe. For they bee onelye excommenged by the sentence called (Sententia lata ſuper cartas) ꝑ doth it wilfully or that dooth it by ignorraunce, and correct not themſelfe wyth in. xb. daies after they haue warninge. And some tyme they ꝑ bee ignorraunt of a statute bee excuſed fro ꝑ penalty of the statut becauſe it shalbe

ignorãs

banished

forfet

Magna Carta

Sententia lata

Excõmuge warning

taken that the intent of the makers of the statut was ꝑ none shoulde bee bounde but they ꝑ haue knowledge, but that any man shall bee dyschar-ged in the lawe by ignorance of the lawe onelye for ꝑ hee is ignorant I knowe fewe causes ex-cept it might be applied to infauntes that bee in theire infancy and within peres of discrecion, for if ignorance of the lawe should excuse in ꝑ lawe many offenders would pretend ignorance. D. Shal an infaunt ꝑ hath discrecion and knoweth good fro euil be punished by a penal statute ꝑ hee is ignorant in. S. If the statute bee that for the offence hee shoulde haue corporall pain I think hee shal bee excused and haue noe corporall paine but I suppose ꝑ ꝑ is not for the ignorance for though he knew the statut and wittingly of-fended, yet I thinke hee shall haue noe corporall paine as where he pleaded iointenancy by dede ꝑ is founde against him, or if he pleade a recorde in assise & failleth of it at his daye, but ꝑ is because the lawe presumethe ꝑ it was not theintente of the makers of the statute ꝑ hee shoulde haue that punishment but if he be of peres of discrecion to knowe good fro euill whether he shall then for-feit ꝑ penalty of a penal statute it is more doubt for it is cōmonly holden ꝑ if an infant hadde not ben excepted in the statut of forfeitudgement ꝑ the forfeitudgement should haue bounde him, & so shal his cesser and his leuying of a crosse againste the statut or if he be a gardein of prison and suffer a prisoner escape he shal pay the det because ꝑ sta-tutes be general & if he should by the statutes be bound in age like reasō wil ꝑ he may by a statut penall

penal leaſe his goods. D. If an infant do a murther or a felony at ſuch yeares as hee hath diſcrecion to know the law, ſhal he not haue ẏ puniſhment of the lawe as one of full age. S. I thinke yes, but that is by an olde maxime of the lawe for eſchewynge of murthers and felonyes, and ſo it is of a treſpas, but theſe caſes renne not vpon the grounde of ignorauunce, but with what act infants, ſhalbe puniſhable or not puniſhable, for the tenderneſſe of theire age, thoughe they be not ignorauant. D. Be not yet knightes and noble menne that are bounde moſte properlye to ſet their ſtudy to actes of chiualrie for defence of the realme, and huſbandemen ẏ muſt vſe tillage & huſbandry for the ſuſtenance of ẏ commonalty, and that may not by reaſon of theire laboure put themſelues to know the law, diſcharged by ignoraunce of the lawe. S. Noe verely, for ſith al were makers of the ſtatute, the lawe preſumeth that all haue knowledge of ẏ that theye make as it is ſaide before, and as they bee bound at their perill to take knowledge of the ſtatute that they make: ſo bee all them that come after them. And as for knights and other nobles of the realm me ſemeth that they ſhould be bound to take knowledge of ẏ law as wel as any other wthin ẏ realme except them ẏ geue themſelf to ẏ ſtudy & exercyſe of the law, and except ſpiritual iudges ẏ in many caſes bee bound to take knoweledge of the lawe of ẏ realme as is ſaid before in ẏ xxv. chapt. For though they be boūde to actes of chiualry for defence of ẏ realme, yet they be bounden alſo to the actes of iuſtice, and that as it ſeemeth more then

taken that the intent of the makers of the statut was ꝑ none shoulde bee bounde but they ꝑ haue knowledge, but that any man shall bee dyschar-ged in the lawe by ignorance of the lawe onelye for ꝑ hee is ignorant I knowe fewe cases ex-cept it might be applied to infauntes that bee in theire infancy and within peres of discrecion, for if ignorance of the lawe should excuse in ꝑ lawe many offenders would pretend ignorance. D. Shal an infaunt ꝑ hath discrecion and knoweth good fro euil be punished by a penal statute ꝑ hee is ignorant in. S. If the statute bee that for the offence hee shoulde haue corporall pain I think hee shal bee excused and haue noe corporall paine but I suppose ꝑ ꝑ is not for the ignorance for though he knew the statut and wittingly of-fended, yet I thinke hee shall haue noe corporall paine as where he pleaded iointenancy by dede ꝑ is founde against him, or if he pleade a recorde in assise & failleth of it at his daye, but ꝑ is because the lawe presumethe ꝑ it was not theintente of the makers of the statute ꝑ hee shoulde haue that punishment but if he be of peres of discrecion to knowe good fro euill whether he shall then for-feit ꝑ penalty of a penal statute it is more doubt for it is cõmonly holden ꝑ if an infant hadde not ben excepted in the statut of forfeiudgement ꝑ the forfeiudgement should haue bounde him, & so shal his cesser and his leuying of a crosse againste the statut or if he be a gardein of prison and sufferr a prisoner escape he shal par the det because ꝑ sta-tutes be general & if he should by the statutes be boũd ẏin age like reasõ wil ꝑ he may by a statut penall

penal leaſe his goods. D. If an infant do a murther or a felony at ſuch yeares as hee hath diſcrecion to knowe the lawe, ſhal he not haue ẏ puniſhment of the lawe as one of full age. S. I thinke yes, but that is by an olde maxime of the lawe for eſchewynge of murthers and felonyes, and ſo it is of a treſpas, but theſe caſes renne not vpon the grounde of ignorannce, but with what act infants, ſhalbe puniſhable or not puniſhable, for the tenderneſſe of theire age, thoughe they be not ignorannt. D. Be not yet knightes and noble menne that are bounde moſte properlye to ſet their ſtudy to actes of chiualrie for defence of the realme, and huſbandemen ẏ muſt vſe tillage & huſbandry for the ſuſtenance of ẏ commonalty, and that may not by reaſon of theire labour put themſelues to knowe the lawe, diſcharged by ignorannce of the lawe. S. Noe verely, for ſith al were makers of the ſtatute, the lawe preſumeth that all haue knowledge of ẏ that theye make as it is ſaide before, and as they bee bound at their peril to take knowledge of the ſtatute that they make: ſo bee all them that come after them. And as for knights and other nobles of the realm me ſeemeth that they ſhould be bound to take knowledge of ẏ lawe as wel as any other wthin ẏ realme except them ẏ geue themſelf to ẏ ſtudy & exercyſe of the lawe, and except ſpiritual iudges ẏ in many caſes bee bound to take knoweledge of the lawe of ẏ realme as is ſaid before in ẏ xxv. chapt. For though they be boūde to actes of chiualry for defence of ẏ realme, yet they be bounden alſo to the actes of iuſtice, and that as it ſeemeth more then

infaunte

manſlaughter felonie murther

knightes chiualry

husbandmen husbandry

knowlage after them

bounde to iuſtice

nowsbar frate

other be by reason of their great possessions & au-
thority. And for the well ordering of ỹ tenants ser-
uants & neighbours, ỹ many times haue nede of
their helpe, & also because they be oft called to be
of ỹ kings counsell, & to the general counsails of
ỹ realme, wher their counsaile is right expedient
& necessary for the common welth, & therfore if ỹ
noble men of this realme would se their children
brought vp in such maner ỹ they should haue ler-
ning & knowlege more then they haue cōmōly
vsed to haue in time past, specially of ỹ grounds
& principles of the law of ỹ realm wherin they be
inherit though they had not ỹ hygh cunning of ỹ
whole body of ỹ law, but after suche manner as
master Fortescue in his boke ỹ he ētitleth ỹ boke
(de laudib⁹ legum āglie) aduertiseth the prince
to haue knowledge of the laws of this realme, I
suppose it would be a great helpe hereafter to the
ministracion of iustice in this realme & great
suerty for themselfe & a right great gladnes to al
the people, for certaine it is, the more part of the
people would more gladly here that their rulers
& gouernours entended to order them ỹ wisedōe
& iustice thā ỹ power & gret retinues. But igno-
rāce of ỹ dede many times excuseth in ỹ laws of
Englād. And I shal shortly touch sōe cases ther
of to shew where it shal excuse & wher it shal not
excuse, & than the reader may adde to it after hys
pleasure and as he shal thinke to bee conuenient.

¶ Certaine cases and grounds where igno-
rance of the dede excuseth in the laws
of Englande, and where not.

¶ The

The.xlvij. Chapter

If a mā buy a horse in open market of him that in right hath no property in him not knowyng but that he hath right he hath good title & ryght to the horse and the ignorance shall excuse hym. But if he had bought him out of that open market, or if he had knowē ỹ the seller had no right, the buying in open market had not excused him. Also if a man retaine another mans seruaunt not knowing that he is retained w̄ him, ỹ ignorance excuseth him both for the offence that was at the common law against the maxime that prohibited such retaining of another manz seruant, And also against the statute of.xxxiij. of Edward ỹ thirde, wherby it is prohibit vpon paine of empꝛisōmēt that none shal retain no seruaunt that departeth within his tearme without licence or reasonable cause, for it hath bene alway taken that the intēt of the makers of the saide statute was that they that were ignorant of the first reteinour should not renne in any penaltye of the statute. And the same lawe is of hym that reteyneth one that is warde to another, not knowynge that hee is hys warde. And if homage be due and the tenant after that the homage is due maketh a feoffement, & after the lorde not knowyng of the feoffement distraineth for the homage in that case that ignorance shal excuse him of damages in a Repleuin thoughe hee cannot anowe for the homage but yf hee hadde knowen of the feoffement hee shoulde haue yelded damages for the wrongful takyng. Also if a man be bound in an obligacion that hee shall

shall repaire the houses of him that hee is bounde to by such a certaine time as ofte as nede shal require, & after the houses haue nede to be repaired but he that is bounde knoweth it not, that ignorance shall not excuse him for hee hathe bounde himselfe to it, & so he must take knowlege at his perill, but if the condicion had bene ẏ he shoulde repaire such houses as he to whom he was boũd should assigne and after he assigneth certain houses to be repaired, but hee ẏ is bounde hathe noe knowledge of that assignement, that ignorance shal excuse him in the lawe, for he hath not bound himselfe to no reparacion in certaine, but to such as the partye will assigne and if hee none assigne he is bound to none, & therfore sith hee ẏ shoulde make the assignement is pryuy to the deede he is bound to geeue notice of his owne assignemente, but if the assignement hadde beene appointed to a straunger than the obligoure muste haue taken knowledge of the assignement at his peryll. Also if a man buy lands whereunto another hath tytle whiche the buyer knoweth not, ẏ ignorance excuseth him not in the law no more then it doothe of goodes. Also if a seruaunt come with his maisters horse to a towne ẏ by custome may attache goodes for det, and vpon a plaint against the seruaunt, an officer of the towne, by informacion of the party atacheth the maisters horse thinkynge that it were the seruants horse, that ignorance excuseth him not, for whan a manne will dooe an acte as to enter into lande, lease goodes, take a distresse or suche other, hee muste by the lawe at his perill see that that hee doothe be lawefully done

done as in that case before rehearsed. And in like wise if a sherif by a repleuin deliuer other beasts then weare distrayned, though the partye ꝑ dystrayned shewed him they were the same beasts, yet an accion of trespas lieth against him, & ignorance shall not excuse him, for he shalbe cõpelled by the law as al officers commonly be to execute the kings writ at his perill accordinge to the tenour of it, and to see ꝑ the acte that hee dothe hee lawfully done. But otherwise it is after sõe mẽ if vppon a summons in a precipe quod reddat the sherif by informacion of the demaundaunt somoneth the tenaunt in another mans land thinkyng it for the tenaunts land there they say he shall be excused, for in ꝑ case hee doth not seaise the lande ne take possession in the land, but onely dooth somon the tenant vpon the land, & ꝑ writ commaũdeth him not ꝑ he shall somon the tenaunt vppon his owne land but generally ꝑ hee shall somon hym, and nameth not in what lande and then by an old maxime in the law it is taken that he shal somon him vpon the lande in demaunde, & therefore though he mistake the land and be ignorante of it, yet if the demaundaunt enfourme him that ꝑ is the lande that he demaundeth that suffiseth to the sherife as to his enter for the sommonyng as they say, though it be not ꝑ tenants. And here I make an ende of these questions for this tyme

D. I pray thee yet or we depart take a little more paine at my desire.

S. What is that. D. That thou wouldest shew me thy mynd in diuers cases of the law of the realm, which as me semeth stãd not so clerely

wyth

with conscience as they shoulde do. And therfore I would gladly heare thy cõceit therin how thei may stande with conscience. S. Put the cases and I shall with good will saye as I thinke to them.

¶ Addicion.

¶ The first queestion of ꝑ Doctour. How the lawe of Englãd may be said reasonable that prohibiteth them that be arreigned vpon an enditement of felony or murther to haue counsaile.

The.xlviij. Chapter.

Me thinketh ꝑ ꝑ lawe in ꝑ point is very good & indifferent taking the lawe therein as it is. D. why what is the lawe in this point. S. The lawe is as thou saist that he shal haue no counsaile but than ꝑ lawe is farther, that in al things ꝑ pertain to the ordre of pleading ꝑ iudges shal so instructe him and so ordre him that he shal renne into no ieopardy by his mispleadinge, as if he will pleade that he neuer knewe the man ꝑ was slain or ꝑ hee neuer had a peny worthe of the goodes ꝑ is supposed that hee shoulde stele, in these cases ꝑ iudges are bound in conscience to enfourme him ꝑ he must take the generall issue and pleade ꝑ hee is not guilty, for thoughe they bee set to bee indifferent betwene the king and the party as to the party as to the principall matter as they bee in

in all other matters, yet they bee set in this case to see ꝑ the partie take no hurte in fourme of pleadyng in suche matters as he shall shew to be the trueth of ꝑ matter, and ꝑ is a greate fauour of ꝑ lawe for in appelle thoughe ꝑ Justices of fauor wyll moste commonlye helpe foorthe the party and sometime his counsaile also in the fourme of pleadynge as they do also many times in common plees, yet they myghte in the cases if they woulde byd the partie and his counsayle pleade at theire perill. But they maye not doe so wyth conscyence vppon enditementes as mee seemeth, for it were a greate vnreasonablenes in the lawe if it shoulde prohibite him ꝑ standethe in ieopardye of his lyfe that he shoulde haue no counsaile, and then to driue him to pleade after the strayte rules and formalities of the lawe ꝑ he knoweth not. D. But what if hee bee knowen for a common offender, or ꝑ the iudges know by examinacion or by an euident presumption ꝑ hee is giltye and he asketh Sentuary, or pleadeth mylnolmer or hath some recorde to pleade ꝑ he cannot pleade after the fourme: May not ꝑ Judges in suche cases bydde him pleade at his perill. S. I suppose ꝑ they may not, for thoughe hee bee a common offender or ꝑ he be gilty, yet he ought to haue that the lawe geueth him, and that hee shall haue ꝑ effect of his plees & of his matters entred after ꝑ fourme of ꝑ law, & also somtime a mā by examinacō & by witnes may appeare guilty ꝑ is not. And in likewise there may be a vehemēt suspicō ꝑ he is gilty & ꝑ yet he is not gilty & there fore for such suspicions or vehemēt presūpciōs me thinketh

Appelle

inditmēt

formalitie

mistrow

offender

gilty

suspicions.

Cōfessiō knowlyg iudge appelle fauour poore cōsell

thinketh a mā may not w cōscīēce be put fro ẏ he ought to haue by ẏ lawe ne yet although ẏ iudges knew it of their owne knowledge. But if it were in appele I suppose ẏ the iudges might do there in as they should thinke best to be done in conscience, for there is noe lawe that byndeth thē to instruct him, but as they do commonly the parties of fauour in all other cases but they may if they wil byd them pleade at their perill by aduise of their counsaile, and if the appele be poore & haue no counsaile, the court must assigne him counsell if he aske it as they must do in all other places, & ẏ mee thynketh theye are bounde to dooe in conscience though ẏ appele were neuer so great an offender, and thoughe the Iudges knewe neuer so certaineiye ẏ he were guilty, for the lawe bindeth thē to do it. And so me thinketh ẏ there is greate diuersitie betwene an indict and an appele. And the reason why the lawe prohibiteth not counsel in appeale as it doth in an inditement, I suppose is this. There is noe appeale broughte but ẏ of common presumpcion the appellaunt hath great malice against the appeale. And whan the appele is brought by ẏ wife of the death of her husband or by the sonne of the death of his father, or that an appele of robbery is brought for stealynge of goods. And therfore if the iudges should in those cases shew themself to instruct the appelles, the appellaunts would grutche and think them perciall, and therefore as well for the indempnitie of the courte as of the appele in case ẏ hee bee not guilty the lawe suffreth the appele to haue cōsel but whan that a man is indicted at the Kynges

indict

appelle malice death robbery

suite

Kinges suit

suite the king intendeth nothing but iustice with fauor & ꝑ is to the rest and quietnes of his faithe full subiects, & to put away misdoers among thē charitably, & therefore hee will be contented ꝑ his iustices shal help forth the offēders according to the trouth as farre as reason & iustice may suffer And as the king wilbe contented therein: it is to presume ꝑ the counsel wil be contented. And so there is no daunger thereby neither to the courte ne to the partye, & as I suppose for this reason it began ꝑ theye shoulde haue noe counsayle vppon inditementes and ꝑ hathe so long continued that it is nowe growen into a custome and into a max ime of the lawe that they shall none haue. D. But if the iudges know of their owen knowlege ꝑ the inditer is giltye, and than he pleadeth misnoimer or a recorde that hee was auterfoits arrayned & acquite of the same murther or felonye, and the iudges of their owen knowledge know ꝑ the plee is vntrue, may they not than bidde hym plead at his peril. S. I thinke yes, but yf they know of their owne knowledge ꝑ he were giltye of the murther or felonye, but that the plee was vntrue they knew not but by coniecture or infor macion I think they myght not then bydde him pleade at his peril.

¶ The second question of the Doctor whether warranty of the yonger brother ꝑ is taken as heire because it is not knowē but ꝑ the eldest brother is dead, be in conscience a bar vnto ꝑ elder brother as it is in the lawe.

The.xlix.Chapter

The.xlix.Chapter

A Man seysed of landes in fee hath issue two sonnes the eldest sonne goeth beyond the Sea and because a common voice is that hee is dead, the yonger brother is taken for heire, the father dyeth the yonger brother entreth as heire and alyeneth the lande with a warraunty, and dyeth without any heire of his body, and after the elder brother commeth agayne and claimeth the lande as heire to hys father, wheather shall he be barred by that warrauntye in conscience as is in the lawe.

warranty

S. It is a maxyme in the lawe that ye eldest brother shal in that case be barred. And that maxime is taken to be of as strong effect in the lawe as if it were ordeined by statute to bee a barre. And it is as olde a law ye suche a warranty shall barre the heire as yt is that the inheritaunce of the father shall onelye descende to ye eldest sonne. And sith the law so is why should not than conscience folowe the lawe as wel as it doth in that point that the eldest sonne shall haue the lande.

D. For there appeareth no reasonable cause whereupon the maxime myght haue a lawful beginninge, for what reason is it that the warrantie of an auncester that hathe no ryghte to lande that should barre him that hath right. And yf yt weare ordeined by statute that one man shoulde haue another mannes lande and no cause is expressed why he should haue it, in ye case thoughe he might holde the lande by force of that statute, yet he coulde not holde it in conscience wout ther

statut

were

were a cause why he should haue it and these ca-
ses be not like as me seemethe to the forfeiture of
goodes by an outlawrie, for I will agree for
thys tyme that that forfeiture standethe wyth
conscyence because it is ordeyned for ministracō
of iustice, but I cannot perceaue anye suche
cause here and therfore me thinketh ẏ this case
is like to the maxime that was at the comō law
of wracke of the sea, that is to saye that if a mans
goodes hadde ben wrecked vpon the sea that the
goods shoulde haue bene immediatlye forfayted
to the kinge. And it is holden by all doctours
that that law is againste conscience except cer-
taine cases that were to long to rehearse nowe.
And it was ordeined by the statute at westmin-
ster the first, that if a Dogge or Catt come aliue
to the lande that the owner if he proue the goods
within a yeare & a day to bee his shal haue them
whereby the saide lawe of wreckes of the sea ys
made more sufferable then it was before & some
thinketh in this case ẏ this warrātye is no barre
in conscience though it bee a barre in the lawe.

E. I praye thee keepe that case of wrecke
of the sea in thy remembraunce and put it here-
after as one of thy questions and thereupō shew
mee thy fauther mynde therin, and I shall wyth
good will shewe thee my mynde, and as to thys
case that were be in nowe me thinketh ẏ maxime
whereby the warranty shalbee a barre is good &
reasonable for it seemeth not against reason that
a man shalbee bounde as to temporall things by
the acte of hys auncester to whome hee is heyre
for lyke as by the Lawe yt is ordayned that hee

shall haue aduauntage by the same auncester, & haue all his lãdes by dissent if he haue any right, so it seemeth that it is not vnreasonable though the law for the priuity of blood that is betwene them suffer him to haue a disauauntage by the same auncester, but if the maxime were that if anye of his auncestors though he were not heire to him made such a warranty, that it should bee a barre, I think that maxime were against cõscience, for in that case there were no ground nor consideracion to proove howe the saide maxyme shoulde haue a lawfull beginning wherefore yt were to be taken as a Maxime against the lawe of reason, but me thinketh it is otherwise in this case, for the reason that I haue made before. D. If the father bynde hym and his heyres to the paiment of a debte and dye in that case the sonne shall not be bounde to paye the debte, vnlesse he haue asses by discente from his father. And so I woulde agree that if this man haue asses by discent from the auncester that made the warrãty: that he shoulde haue ben barred, but els me thinketh it shoulde stand hardlye with conscięce that it shoulde bee a barre. D. In that case of the obligacion the lawe is as thou sayest and the cause is for that the Maxime of the law in that case is none other but that he shalbe charged if he haue asses by discent, but if the maxime hadde beene generall that the heyre shoulde be bounden in that case wythout anye asses, or if yt were ordeined by statute that it should bee so, I thynke that both the Maxime and the Statute shoulde well stande wyth conscyence. And lyke lawe

lawe, is where a manne is vouched as heire, hee may enter as he that hath nothing by discent but where he claymeth the Lande in his owne right there the warrantie of his auncester shall bee a barre to him though he haue no asses fro ỹ same auncester, and though it be saide in Ezechiel the xviii. chapter, That the sonne shall not beare the wickednes of the father, that is vnderstand spiritually. But as to temporall goodes the opinion of doctours is, that the sonne somtyme may beare the offence of his father. D.

Nowe that I haue heard, thy mynde in thys case, I wil take aduisement therein till a better leasure. And wil now ꝓceede to another questiō.

S. I pray thee do as thou saiest & I shall with good wil make answer therto as wel as I can.

¶ The thirde question of the doctour if a manne ꝓcure a collaterall warrantie, to extinct a right that he knoweth an other man hath to lāde whether it be a barre in cōscience as it is in the law or not.

The.l. Chapter.

A Man is disseased of certaine lande, the disseasour tilleth the Lande &c. the alienee knowing of the disseison obteineth a release with a warranty of an auncester collateral to ỹ disseasy, that knoweth also the right of ỹ disseasy. That auncester collateral dyeth after whose death ỹ warranty discendeth vpon the disseisy, whether may the alyene in that case holde the lande in conscy-

warrantie

ence as he maye by ỹ law. S. Sith the warran-
tie is discended vpon him whereby hee is barred
in the law me thinketh that he shal also be barred
conscience in conscience, and that this case is like to the case
in the next chapter before, wherein I haue saide
that as mee thinketh it is a barre in conscyence.

knowing right

D. Though it might be taken for a barre in
conscience in that case, yet mee thinketh in thys
case it cannot, for in the case the younger brother
entred as heire knowing none other but that hee
was heire of right, & after when he sold the land
the byer knew not but that hee that solde it had
good right to sell it, and so hee was ignorant of
the title of the eldest brother and that ignorance
came by the default and absence of him selfe that
was the eldest brother. But in this case as well
the byer as he that made the collaterall warran-
tie, knew the right of the disseasy & did that they
coulde to extincte the right, and so they did as
they would not should be done to them, and so it
seemeth that he that hath the lande maye not vn
conscience kepe it.

S. Though it be as thou saiest that al they offē-
ded in optaining of the saide collaterall warran-
tie, yet such offence is not to bee considered in the
law, but it be in very speciall cases for if such ale-
giance should bee accepted in the law, releases &
other writinges shoulde bee of small effecte, and
vppon euery right surmise all writinges might
come in triall whether they were made with co-
science or not. Therefore to auoide that inco-
uenience the law will driue the partye to aun-
swere onely whether it bee his deede or not and

not

not whether the dede were made with conscience or againste conscience, and thoughe the partye may be at a mischiefe therby, yet the lawe will rather suffer ꝑ mischiefe than ꝑ said inconuenience. And like lawe is if a woman couert for dread of her husbande by compulcion of him leuye a fyne, yet the woman after her husbandes death shall not be admitted to shewe that matter in auoidig of ꝑ fine for thinco̅uenience ꝑ might folow therupon. And after the oppinion of many men there is no remedye in these cases in the Chauncerye for they say ꝑ where ꝑ common lawe in cases cō-cerning inheritance putteth the party fro any auerment for eschewing of an inconuenience that might folowe of it among the people, that if the same inconuenience should folowe in the Chaū-cerye if the same matter might bee pleaded there that no sub pena should lye in suche cases, & so yt is in the cases before rehersed. For asmuch vexation, delay, costes, and expenses might growe to the party if he shoulde be put to answere to such auermentes in the chauncerye as hee were putte to aunswere to them at the common lawe and therefore they think that no Sub pena lyeth in ꝑ saide cases ne in other like vnto them. Neuertheless I do not take it ꝑ theire opinio̅ ys that he that bought the lande in this case maye wyth good conscience holde the lande because hee shall not be compelled by no law to restore it, but that hee is in conscience and by the lawe of reason bounde to restore yt or otherwyse to recompence the partye so as hee shalbee contented, and I suppose verelye it is so yf hee wyll keepe hys

soule out of perill and daunger. And after some men to these cases may bee resembled the case of a fine with none claime that is remembred before in the xiiii. Chapter of this booke, where a man knowing another to haue right to certaine lande causeth a fine to be leuied therof with proclamacion and the other suffereth fiue yeares to passe without claime in that case hee hath no remedye neither by common lawe, nor by Sub pena, and that yet he that leuyed ỹ fine, is bound to restore the land in conscience. And me thinketh I could right well agree that it should bee so in this case, & that specially, because ỹ party himself knoweth perfectly that ỹ saide collaterall warrantye was obteined by couyn and against conscience.

¶ The fourth question of the doctour is of wrecke of the Sea.

The.li. Chapiter.

I Pray thee let me nowe heare thy mynde howe the lawe of Englande concerninge goodes that be wrecked vpon the sea maye stande with conscience, for I am in greate doubte of it. S. I praye thee let me first heare thine oppinion what thou thinkest therein. D. The statute of westminster the first that speaketh of wreck is, that if any man, dogge or catte, come aliue to the land out of the ship or barge, that it shall not bee iudged for wrecke, so that if the partye to whome the goods belong come within a yeare and a day and proue them to be his that he shall haue them or els that they shal remaine to the kinge. And me thinketh that the saide statute standeth not with

with conscyence, for there is no lawfull cause why the party ought to forfeyte his goodes ne ȳ the kinge or lordes ought to haue them, for there is no cause of forfeiture in the partye, but rather a cause of sorowe & heauines. And so that lawe meth to adde sorow vpon sorowe. And therefore doctoures holde commonlye that hee that hathe such goodes is bounde to restitucion and that no custome may helpe for they saye it is against the commaundement of God. Leui. xix. where it is commaunded that a man should loue his neighboure as himselfe, and that they say he doth not that taketh awaye his nighboures goodes, but they agree that if any manne haue coste & labour for the sauinge of suche goodes wrecked specially for suche goodes as woulde perishe if they lay still in the water as Sugar, paper, salte, Wele, and such other, that hee oughte to bee alowed for his costes and labour, but hee muste restore the goodes except hee coulde not saue them without putting his lyfe in ieoperdye for them, and than if he put his lyfe in suche ieoperdye and ȳ owner by common presumpcion had had no way to haue saued them, then it is most commōly holden that he may kepe the goods in conscience, but of other goodes that woulde not so lyghtly perishe, but ȳ the owner might of common presumption saue them himselfe, or that might bee saued without any perill of life the takers of them bee bound to restitucion to the owner, whether hee come win the yeare or after the yeare.

And mee thynketh this case is somewhat like to a tale that I shall putte, if there were a lawe

and a custome in this Realme or if it were ordeined by statute that if any alien came through ye Realme in pilgrimage & died, that all his goodes shoulde be forfeit, that lawe should bee agaynste conscience for there is no cause reasonable why the saide goodes should bee forfeit. And no more mee thinketh there is of wreche. ¶. There bee diuers cases where a manne shal lese his goodes and no default in him, as where he astes straye away fro a man and they be taken vppe and proclaimed and the owner hathe not hearde of them within the yeare and the daye, thoughe hee made sufficient diligence to haue heard of them, yet the goodes bee forfeit and no defaulte in him, & so it is where a man killeth another with the sworde of J. at Stile the sword shalbee forfeit as a deodand, & yet no default is in the owner, and so mee thinketh it may be in this case, and that sithe the common lawe before the saide statut was that the goodes wrecked vppon the sea shalbee forfeite to the king that they bee also forfeite nowe after the statute except they bee saued by following the statute, for the lawe must nedes reduce the propertie of al goods to some man and when the goods be wrecked it seuneth the property is in no man but admitte that the propertye remaine styll in the owner, than if the owner parcase wouldе neuer claime, than it shoulde not be knowen who ought to take them: and so myghte they bee dystroyed and no profite come of them, wherefore me thinketh it reasonable that the lawe shall appoint who ought to haue them, and that hath the lawe appointed to the king as soueraigne & heade ouer

ouer the people. D. In the cases that thou hast put before of the straye and deodand there be cō-
sideracions why they bee forfeite, but it is not so here, and mee thinketh that in this case it were not vnreasonable that the lawe should suffer a-
ny man that would take them to take and kepe them to the vse of the owner, sauinge his reaso-
nable expenses, and this me thinketh were more reasonable law than to pull the propertie oute of the owner without cause. But if a man in ye sea cast his goods out of the shipp as forsaken there doctours holde that euery manne maye take thē lawfullye that will, but otherwise it is as they saye if he throwe them out for fere ye they should ouercharge the shipp.

S. There is no suche lawe in this Realme of goodes forsaken, for though a manne weyue the possession of his goodes and saythe hee forsaketh them, yet by the lawe of the realme the propertye remaineth styll in hym, and hee maye seale them after when he will, and if any man in the meane tyme putte the goodes in saufegarde to the vse of the owner, I thinke hee doothe lawfullye and that he shalbee allowed for his reasonable expen-
ses in that beehalfe as hee shall bee of goodes founde, but hee shall haue no propertye in them no more than in goodes founde. And I woulde agree that if a man prescribe that if hee fynd any goodes within his manner that hee shoulde haue them as hys owne: that that prescripcion were voide, for there is no cōsideracion how that pre-
scripcion might haue a lawfull beginninge, but in this case me thinketh there is D. what is that?

S.

S. It is this. The kynge by the olde custome of the realme, as lorde of the narrow sea, is bound as it is saide to scoure the sea of pirates and petit robbers of the sea. And so it is reade of the noble kynge sainte Edgare, that hee wouldе twise in the yeare scoure the sea of suche pyrates, but I meane not thereby that the king is bound to conduct his marchants vpon the sea against al outwarde enemies, but that hee is bounde oneiye to put awaye suche Pyrates and petit robbers. And because that cannot be done without greate charge, it is not vnreasonable if hee haue suche goodes as bee wrecked vpon the sea towarde the charge. D. Upon that reason I will take a respite til another time.

¶ The. v. question of the Doctoure whether it stand with conscyence to prohibite a Jury of meate and drynke tyll they bee agreed.

¶ The.lii. Chapter.

If one of the .xii. men of an enquest knowe the verye trouth of his owne knowledge, and instructeth hys felowes therof, and they wil in no wise geue credence to him, and therupon because meate and drinke is prohibite them, he is driuen to the point that either hee must assente to them, and geue their verdite against his owne knowledge, and againste his owne conscience, or dye for lacke of meate, how may ỹ lawe then stande with conscience that wyll dryue an innocente to that extremitie, to be either forsworne or to be famished and dye for lacke of meate. S. I take not the lawe of the realme to be that Jury after they be

be ſworne maye not eate nor drinke tyll they bee agreed of the verdite: but trouth it is there ys a Maxime, and an olde cuſtome in the Lawe, that they ſhal not eate nor drinke after they be ſworn till they haue geeuen theire verdycte wythout the aſſent and lycence of the Juſtice, and that ys ordeyned by the lawe for eſchewynge of dyuers inconueniences that might folow therupon, and that ſpeciall if they ſhoulde eate or drynke at the coſtes of the parties, and therefore if they doe the contrarye, it may: bee laide in areſt of the iudgement, but with the aſſent of the Juſtices, they maye bothe eate and drinke, as if any of the Iurours fall ſick before they be agreed of their verdit ſo fore that hee maye not common of the verdit, than by that aſſent of ỹ iuſtices he may haue meate and drinke and alſo ſuche other thinges as bee neceſſarie for him and his fellowes alſo at theire owne coſtes, or at the indifferent coſtes of the partyes yt they ſo agree, or by the aſſente of the iuſtices may both eate and drinke and therefore if the caſe happen that thou nowe ſpeakeſt of and that the Jurye can in no wiſe agree in theire verdit, and that appeareth to the Juſtices by examinacion: the Juſtices maye in that caſe ſuffer them haue bothe meate and drinke for a tyme to ſet whether they wyll agree, and if they will in no wiſe agree: I think that then iuſtices may ſett ſuch order i ỹ matter as ſhal ſeme to thē by theire diſcretion to ſtand wᵗ reaſon and conſcience by awarding of a new enqueſt ꝛ by ſetting fyne vpon them that they ſhal finde in defaut or otherwiſe: as they ſhall think beſte by theire diſcretion lyke as

Custom lyeth not of Iuſtices meat

not of thiefe aſt in indyment

owne not or ytiſ

iuſtice Examina cion

Iuſtice ouer fynd none Iuſtice

Iuſtice diſcretion.

as they may do if one of the iurie dye before ver-
dit, or if any other like casualties fall in that be-
half. But what the iustices ought to doe in this
case ỹ thou hast put by theire discrecion: I will
not treate of at this tyme.

¶ The vi. questions of the Doctour whether the
colours that be geuen at the common law in assi-
ses, accions of trespas, and diuers other
acciõs stand wt cõscience because
they be most comonly feyn-
ned & be not true.

¶ The .liii. Chapter.

I Praye thee let mee here thy mynde to what in
tent suche colours be geuen, and sithe they bee
commonly vntrue: howe they may stande wyth
conscience. S. The cause why suche colours bee
geeuen in this, there is a maxime and a grounde
of the lawe of Englande, that if the defendaunte
or tenaunt in any accion plede a ple that anoun-
eth to the general issue that hee shalbee cõpelled
to take the generall issue, & if he will not, hee shal
be condempned for lacke of aunswere, and the ge
nerall issue in assise is, that he that is named the
disseasoure hath done no wrong nor no disseason.
And in a writte of entre in the nature of assise the
generall issue is that hee disseased him not, and
in an accion of trespas that he is not guiltye and
so euerye accion hath his generall issue assigned
by the law, and the tenaunt must of necessitie ei-
ther take ỹ generall issue, or plede some plee in a-
batement of the writte to the iurisdiccion, to ỹ y-
son or eis some barre or some matter by waye of
conclusion. And therfore if John at Stile enfeffe

Henry

Henry Hart of lande and a stranger bringeth an assise against the said Henry Harte for that lāde whose title he knoweth not. In this case if hee should be compelled to pleade to the point of the assise, that is to say, that he hath done no wronge ne no disseason, the matter shoulde bee put in the mouthes of xii. lay men which bee not learned in the lawe, and therefore better it is that the lawe bee so ordered that it be put in the determinacion of the iudges than of laye menne. And if the saide Henrye Harte in the case before rehearsed, woulde pleade in barre of the assise that John at Stile was seased & infeffed him, by force wherof hee entred and asked iudgement if that assise should lye against him, that plee were not good for it amounteth but to the generall issue & therfore he shalbe compelled to take the general issue or els the assise shalbee awarded against him for lacke of aunswere. And therefore to the entente the matter may bee shewed and plead before the iudges rather then before the Jury, the tenants vse to geue the plaintife a coloure, that is to saye a colour of accion whereby it shall appere that it were hurtfull to the tenaunt to putt that matter that hee pleadeth to the iudgement of xii. men, & the moste common coloure that is vsed in suche case is this, when he hath pleaded & suche a man enfeffed him as before appeareth it is vsed that he shall pleade farther and saye that the pleintyfe claiming by a colour of a dede of feoffemēt made by the saide feoffoure before the feoffement made to him, whereunto hee passed by the deede entred vpon whome he entred and asked iudgement yt the

fo. fmont assise

nul tort

12. mon

demur

fo. fmt pleaded

assise awarded for āswere

Colour of fo. fmt

bo. as fo. fmt

ask iudgment

tenaunt

lyeth of bason in ℓ plea

no default in Court

Entent knowing ffrenert

mendacium pernicioſum hyght

venial

the aſſiſe lye againſt hym. In this caſe becauſe it appeareth to be a doubt to vnlearned me whether the lande paſſe by the deede without liuerye or not, therefore the law ſuffereth the tenaunt to haue that ſpeciall matter to bringe the matter to the determinacion of the Iudges. And in ſuche caſe the Iudges may not put the tenaunt fro the plee, for they knewe not as Iudges but that yt is true, and ſo if any default be, it is in the tenant and not in the court. And thoughe the trouth bee that there were no ſuche deede of feoffemente made to the plaintike as the tenaunte pleadeth, yet me thinketh there is no default in the tenant for he doth it to a good intente as before appeareth. D. If the tenaunt knowe that the feoffour made no ſuche deede of feoffemente to the plaintyke, than there is a default in the tenaunte to plede it for he wittingly ſaith againſt the trouth and it is holden by all doctoures that euerye lye is an offence more or leſſe, for if it bee of malyce, and to the hurte of his neighbour, than it is called (Mendacium pernicioſum) & that is deadlye ſinne. And if it be in ſporte and to the hurte of no man, nor of cuſtome vſed, ne of pleaſure that he hath in lyinge, than it is venial ſinne, and is called in latine, mendacium iocoſum.) And if it bee to the profite of his neighboure and to the hurte of no man, than it is alſo venial ſinne, and is called in latine mendacium officioſum. And though it be the leſt of thoſe three, yet it is a venial ſinne and ſhould be eſchewed. S. Thoughe the Midwiues of Egipt lyed when they hadde reſerued the male chyldren of the Ebrewes ſayinge to the king

midwiues of Egipte

king Pharao, that the Hebrewes hadde women that were cunninge in the same craafte, whyche or they came hadde reserued the chyldren alyue, where in dede they themselues of pitye & of drede of god reserued them, yet saint Hieromie expoũ=deth the texte folowinge whiche saieth that oure Lorde therfore gaue them houses, that is to bee vnderstande that he gaue them spiritual houses, and that they had therefore eternal reward, and if they sinned by that lye although it were but veniall, yet I cannot see how they shoulde haue therefore eternall reward. And also if a man in tending to slea another, aske me where that man is, is it not better for me to lye and to say I can not tell where he is thoughe I knowe it, then to shewe where he is, whereupon murther shoulde folowe? D. The deede that the mid=wiues of Egipt did in sauinge the chyldren was meritorious and deserued reward euerlastinge (if they beleued in god) & did good deede beside, as it is to suppose they did, when they for the loue of God, refused the death of the innocentes, and than thoughe they made a lye after whyche was but veniall sinne, that coulde not take fro them their reward, for a veniall sinne doth not vtterlye extincte charitie but letteth the feruour thereof, and therefore it maye well stande wyth the woordes of saint Hierome, that they had for their good deede eternall houses, and yet the lye that they made to be a veniall sinne, but neuer=theleſſe it such a lye that is of it self, but venial be affirmed wyth an oth, it is alway mortal if he knew it be false that he sweareth. And as to the other

question

women of Israell

Jerome

spiritual house eternal reward

man killed lye merito

beleued in god

venial vanity

oth

mortall

question it is not like to this question that wee haue in hande as mee seemeth, for sometime a mā for eschewinge of the greater euyll maye doo a lesse euill, and then the lesse is no offence in him & so it is in the case that thou hast put wherein because it is lesse offence to saye hee wotteth not where he is though hee knowe where he is than it is to shewe where hee is, wherupon murther should followe, it is therefore no sinne to saye hee wotteth not where he is, for euery man is bound to loue his neighboure and if hee shewe in thys case where he is knowing his death shoulde followe thereupon it seemeth that he loued him not ne that he did not to him as he would bee doone to, but in the case that wee be nowe here, there is no such sinne eschewed for though the partye pleadeth the generall issue the Jury might finde the trouth in euery thynge, and therefore in that hee saith that she plaintife claiming in by the coloure of a deede of feoffement where nought passed entred & knowing that there was no such feoffement it was a lye in hym and a venial sinne as me thinketh. And euery man is bounde to suffre a deadly sinne in his neighbour, rather than a venial sinne in himselfe.

S. Though the Jury vpon a generall issue maye fynde the trouthe as thou sayest, yet it is much more daungerous to y Jury to enquire of many poyntes than to enquire onely of one poynt. And forasmuch as our lorde hath geeuen a commaundement to euery man vpon his neighbour, therefore euery man is bound to force as much as in him is by him is no occasion of offēce cōe to his neigh-

lossoffers
mustsee
lone sib neighbors
Jury find trouthe
Colour of feffment
deadlier sinne in sib neighbors
many points Jury
no occasion of offence

neighboure. And for the same cause, the lawe hath ordeined diuers Maximes and principles, wherby issues in the kyngs court may be ioyned vpon one point in certaine as nigh as may bee, & not generally, least offence might folow therupō against god, & a hurt also vnto ỹ Jury, wherfore it seemeth that hee loueth not hys neighboure as him selfe, ne ỹ he doth not as he woulde bee done to, ỹ offreth such danger to his neighbour, where he may wel and conueniently kepe it fro hym, yf he wil folow the order of the lawe, and it semeth ỹ he putteth him self wilfully in ieopardy ỹ doth it & it is written. Ecclesiastici. iij. Qui amat periculum, in illo peribit, that is to saye, he that loueth peril, shall perish in it, and hee that puttethe his neighbour in peril to offend putteth himselfe in the same, and so should hee do me seemeth that would wilfully take the general issue, where hee might conueniently haue the special matter, and furthermore it is none offence in princes and rulers to suffer contractes and bying and selling in markets, faires, though both periury and discept will folow therupon, because suche contracts be necessary for the cōmon wealth, so it semeth likewise, ỹ there is no defaulte in the partye ỹ pleadeth such a special matter to auoid fro his neighbour the daunger of periury, ne yet in the courte though they induce him to it, as they do somtime for the intente beefore rehearsed, and in likewyse some wyll saye that if rulers of citics and communalties sometime for ỹ punishement of felons murtherers, & such other offenders wyll to the intente, they would haue them to confesse ỹ truth

say to them ỹ bee suspected that they bee infourmed in such certaine defaultes or misdemeanours in the offẽdours and ỹ they dooe to the intente to haue them to cõfesse the truthe, ỹ thoughe theye weare not so unfourmed that yet it is no offence to say they were so infourmed because they do it for the cõmon wealth, for if offẽdours were suffered to go vnpunished, the cõmon wealth wouldе sone decaye and vtterly perish.

D. I wyl take aduisement vpon the reason in this matter til another season, & I wil now aske thee another question som what like vnto thys, I pray thee let me here thy minde therin. S. Let mee here thy question and I shall & good will saye as I think therin.

¶ Addicion.

¶ The. vii. question of the Doctoure concerneth the pleadyng in assise, whereby the tenantes vse sometime to pleade in such maner that they shal confesse no ouster.

The.xliiii.Chapter.

IT is commonly vsed as I haue heard saie that whan the tenant in assise pleadeth ỹ a straunger was seised and infeoffed him, and geueth the plaintife a colour in such maner as before appereth in the.xlviii.Chapter, ỹ the tenaunt many times when he hath pleaded thus, and the plaintife clayminyng by a colour of a dede of feoffement made

nothing passed.

made by the saide straunger, wher nought passed by the dede entred, and ꝑ then they vse to saye further vpon whom A.B. entred vppon whom the tenaunt entred, where in dede ꝑ saide A.B. neuer entred. ne happly there was neuer no such man. How cā this pleading be excused of an vntruth, & what reasonable cause can be why suche a pleadyng should be suffred against the trouth. S. The cause why that maner of pleadyng is suffred is this. If ꝑ tenant by his pleadyng confessed an immediate entry vppon the plaintife, or an immediate puttyng out of ꝑ plaintife, which in frenche is called an ouster, then if the title were after found for ꝑ plaintife: ꝑ tenant by his cōfessiō were attainted of the disseysō. And because it may be ꝑ though the plaintife haue good title to ꝑ lād, ꝑ yet ꝑ tenāt is no disseysor. Therefore the tenaunts vse many tymes to pleade in suche maner as thou hast said before to saue themselfe fro confessynge of an ouster, and so if ther be any default, it is not in ꝑ courte ne in the lawe, for they knowe not the trouth therin till it be tryed, and me thinketh also that there is in this case ryght litle default or none in ꝑ tenaunt nor in his counsell, specially if the counsayle knowe that the tenaunt is no disseisour. But as to ꝑ point I pray thee ꝑ thou as thou hast taken a respite to be aduised or ꝑ thou shew thy ful mynd in the questiō of a colour geuen in assise wherof mencion is made in the said.xlviij. Chapter, ꝑ I in likewise may haue a like respite in this case till other time to bee aduised, and then I shall wyth good will shew thee my full mynde therein.

A. entred and dyd ouster entred

no entry

Fo.162 immediat entris ouster good title no disseisor default tantz tried ꝓbatt

Colour

against truth

horse stealing

force & armes

indict not

effect of bill

Jury

guilty. not manner & forme

D. I am content it bee as thou saist, but I pray thee ꝑ I may yet adde another question to the .ij. questiõs before rehearsed of the colours in assyse and fele thy mynde therein, beecause ꝑ sowmethe much to the same effect ꝑ the other do (that is to saye) to prouc ꝑ there bee diuers thinges sufferred in the lawe to bee pleaded ꝑ bee againste the trouth, & I pray thee let me hereafter knowe thy mynd in all three questions, and thou shalte then with a good wyll knowe myne. S. I pray thee shewe me the case that thou speakest of.

D. If a manne steale an horse secretlye in the night, It is vsed ꝑ thereupon hee shalbee indyted at the kynges suite, and it is vsed, that in ꝑ inditement it shalbe supposed ꝑ he such a tyme and place with force and armes, that is to saye, wyth staues, sweordz, and knines &c. felonyously steale the horse against the kinges peace, and ꝑ fourme must be kept in euery inditement, though ꝑ felon had neither sweord nor other weapon with hym but ꝑ hee came secretlye without weapon. Howcan it therefore be excused, but that therein is an vntrouthe. S It is not alledged in the Inditement by matter in dede that hee hadde suche weapon, for the fourme of an inditement is this Inquiratur pro domino Rege, si A. tali die et Anno apud talem locum vi et armis videlicet gladiis &c. talem equam talis hominis felonice cepit &c. And then the twelue men be onely charged wt the effecte of the byll, That is to saye, whether he be gilty of ꝑ felony or not, & not whether he be gilty vnder suche maner and fourme as the bill specifieth or not, and so when they say (billa vera)

(bilia vera) they saye true as theye take ỹ effecte of the bil to be. And therefore if there weare false latin in the bill of inditement, & the Jury sayeth (bilia vera) yet their verdit is true, for their verdit stretcheth not to the trouth or falshed of the latin but to the felonye, ne to the fourme of the wordes, but to the effecte of the matter, and ỹ is to inquire whether there were any suche felony done by ỹ parson or not, and thoughe the byll vary from the day, fro ỹ yere, and also from ỹ place where ỹ felony was done in, so it vary not from the shire ỹ the felony was done in:

And the iury saith (bilia vera) they haue geuē a true verdyt for they are bounde by theire othe to geue their verdit according to ỹ effect of the byll and not according to ỹ fourme of the byll. And so is he that maketh a vow bounde lykewise to that ỹ by ỹ law is the effect of his auow, and not only to ỹ wordes of his auow. And if a mā auow neuer to eat white meat, yet in time of extreame necessitie he may eat white meat, rather then die and not breake his avow, though hee affirmed it with an othe, for by the effecte of his auowe, extreme necessitie was excepted, though it wer not expressely excepted in ỹ wordes of the auowe, & so likewise though the wordes of the byll bee to enquere whether such a man such a day and yere and in such a place did such a felony, yet the effect of the byl is to enquire whether he did the felony within the shire or no, and therefore ỹ Justices before whom such inditements be take, most commonly enfourme the Jury ỹ they are bound to regard ỹ effect of the byll and not the fourme.

And therefore there is no vntrouth in this case, neyther in hym that made the byll, ne yet in the Jurye as mee seemeth. D. But if the partye ỹ ought the horse bringe an accion of trespasse, & declareth ỹ the defendaunt tooke the horse wyth force and armes, where hee toke him wout force and armes: How may the plaintife there be excused of an vntrouth.

trespas fource & armes vntrouth

S. And if the plainetife surmitte an vntrouth, what is ỹ to the court or to ỹ law, for they must beleue the plaintif, tyll that ỹ he saith bee denyed by the defendant. And yet as this case is, there is no vntrouth in the plaintife to say hee tooke the horse with force and armes, though he came neuer so secretly and without weapon, for euerye trespas is in the law done wt force and armes, so ỹ if hee bee attaunted and founde guiltye of the trespas, hee is attainted of the force and armes. And sith the lawe adiudgeth euery trespas to be done wt force, therfore the plaintife sayth truelye ỹ hee toke him with force as the lawe meaneth to be force. For though he toke the horse as a felon, yet vpon ỹ felonous taking the owner maye take an accion of trespas and if he wyll, for euery felony is a trespas and more. And so I haue shewed thee some part of my mynde to proue ỹ in those cases there is no vntrouth neither in the parties, neither in the Jury, nor in the law. Neuertheles, at a better leysure I will shewe thee my mind more fully therin wt good will as thou hast promised me to do in the cases of the colours of the assise, and of the ouster that bee before rehearsed.

attaint of force & armes

trespas wt force

felony wt trespas & more

The

¶ The. viij question of the Doctour whether the statut of. xiv. of Edwarde the third of Silua Cedua, stand with conscience.

The. lv Chapter.

IN the xiv. yeare of the raigne of king Edward the thirde, it was enacted that a prohibicion should lye where a man is impleded in the court Christien, for dismes of woode of the age of. xx. yeare or aboue by the name of Silua cedua, how maye that statute stande with conscience ẏ is so directly against the libertie of the churche, & that is made of suche thinges as the Parliament had no aucthoritie to make anye lawe of. D. It appeareth in the said statute that it is enacted that a prohibition shoulde lye in that case, as it hadde vsed to do before that time, and if the prohibicion lay by a prescription before ẏ statute why is not than the statute good as a confirmacion of that prescripcion. D. If there were suche a prescription beefore ẏ statute that prescription was voidē, for it prohibiteth ẏ paymente of tithes of trees of the age of. xx. yere or aboue, and payinge of tythes is grounded as well vpon the lawe of God, as vpon the law of reasō, and against those lawes lyeth no prescription as it is holden moste commonly by all menne.

S. That there was such a prescripcion before ẏ sayd statute, & ẏ if a man before ẏ saide statute had bē sued in ẏ spirituall court for tithes of wood of ẏ age of. xx. yere or aboue ẏ prohibicion lay, as

appeareth in the sayde statut, and it canne not be thought that a statut that is made by aucthority of the whole realme, as wel of the kynge and of the lordes spirituall and temporall as of all the commons will recyte a thing against the truthe. And furthermore I cā not see how it cā be grou̅ded by the lawe of God, or by ẏ law of reason ẏ the tenth part should be payd for tythe and none other porcion, but that, but I thinke that it bee grounded vpon the lawe of reason that a manne should geeue a reasonable porcion of his goodes temporall to them that minister to him thynges spiritual, for euery mā is bou̅d to honour god of his proper substāce, & the geuing of such porcyon hath not ben only vsed amō̄g faithful people, but also amō̄g vnfaithful as it appeareth Gene. xlvij. where corne was geuen to the priestes in Egipt of cōmon barnes. And. S. Paule in hys epistles affirmeth the same in many places, as in his first Epistle to the Corinthians, the. ix chapter where he sayeth he ẏ worketh in the churche shall eate of that ẏ beelongeth to the churche. And in hys Epistle to the Galathes ẏ. vi. Chapter, he sayth, hym that is instructed in spiritual thinges departe of hys goodes to him ẏ instructed him. And sainct Luke in the. x. Chapter sayeth ẏ the workeman is worthy to haue his hire all whiche sayings may right conueniently be taken and applied to this purpose that spiritual menne which minister to the people spiritual things, oughte for their ministracion to haue a competent liuing of them that they minister vnto. But that the. x. part should be assigned for such a porcion & neither

ther more nor lesse, I can not perceiue that that
shouid be grounded by the law of reason, nor im=
mediatly by the lawe of God, for before the lawe
written there was no certayne porcion assygned
for the spiritual ministers, neither the tēth part
nor the.xū.part vnto the tyme of Jacob, for it
appeareth. Genesis.xxviij. that Jacob auowed
to paye dismes whiche was among the Jewes
for ỳ.x.part if our lord prospered him in his iour
ney, and if the.x.part had bene his duety before ỳ
auow, it had bene in vaine to haue auowed it, &
it had if it had ben groūded by ỳ law of reasō,
and as to that ỳ is spoken in the Euangelystes,
and in the new law of tithes, it belongeth rather
to the geuinge of tithes in the time of ỳ olde law
then of the new lawe, as appeareth Mathewe.
xxiii. and Luke.xi. where our lord speaketh to the
Phariseis saiyng wo be to you Pharises ỳ tithe
mintes, rue, and herbes, and forget ỳ iudgement
and ỳ charitie of god, these it behoueth you to do
and the other not to omit, that is to saye, it beho=
ueth you to do iustice and charitie of God, & not
to omit payīg of tithes though it be of small thin
ges, as of mintes, rew, herbes, and such other.
And also that ỳ the Pharisey saieth. Luke.xviij.
I pay my tithes of al ỳ I haue is to be referred
to the olde law not to ỳ time of the new lawe.
Therefore as I take it ỳ the payynge of tythes
or of a certain porcion to spiritual men for theire
spiritual ministracion to the people, hathe beene
grounded in diuers maners. Firste before ỳ law
written a certaine porcion sufficient for the spy=
rituall ministers was due to them by the lawe of
na=

ỳ. pt
Lawe of
nature
godlawe
written

Jacob
avowed
ỳ. pt

old law
none
tythes

Payment
for
spiritual
deede

before ỳ lawe written.

law of nature

nature, whiche after them that be learned in the law of the realme is called the law of reason, and that porcion is due by all lawes, and in the law written, the Jewes were bound to geeue the .x. part to their priestes aswell by the sayde auowe of Jacob, as by the lawe of God in the old testament called the Judicialles. And in the new law the paying of the tenth part, is by a lawe that is made by the church. And the reason wherfore the x. part was ordeined by the church to be payd for the tithe was this. There is no cause why the people of the new law ought to paye lesse to the ministers of the new law, then the people of the olde testament gaue to the ministers of the olde testament. For the people of ỹ new law be boũd to greter thinges then ỹ people of the olde lawe weare, as it appeareth. Math. v. where it is said but your good workes abounde aboue ỹ workes of the Scribes and the Phariseis, ye may not enter into ỹ kingdome of heauen. And the sacrifice or the olde lawe was not so honorable as the sacrifice of the new lawe is, for the sacrifice of the olde lawe was onely the figure, and the sacrifice of the newe lawe is the thinge ỹ is figured, that was the shadow, this is ỹ trouth. And therefore the church vpon ỹ reasonable consideracion ordeyned ỹ the tenth part should bee payd for ỹ sustenaunce of ỹ ministers in the newe lawe, as it was for the sustenaunce of the myn̄isters in the olde lawe, and so ỹ lawe ẅ a cause maye bee encreased or minished to more porcion or to lesse as shalbee necessarye for them. D. It appereth Genesis. xiiij. that Abrahaun gaue to Melchise-

dech

dech dismes, and ꝑ is taken to be the tēth part & ꝑ was long before the law written, and therfore it is to suppose ꝑ he did that by the law of God. S. It appeareth not by anye scripture that he did ꝑ by the commaundement of God, ne by any reuelacion. And therefore it is rather to suppose ꝑ hee did parte of dutye, and parte of hys owne free wyll, for in ꝑ hee gaue the dismes as a reasonable porcion for the sustenaunce of Melchisedech and his ministers, he did it by commaundement of the lawe of reason as before appeareth, but ꝑ he gaue the tenth parte, ꝑ was of hys free wil, and because he thought it sufficient and reasonable, but if he had thought the .xij. part or the xiij. part had suffised, he might haue geuen it and ꝑ with good conscience. And so I suppose that in the newe law, ꝑ geuing of the x. parte is by a lawe of the churche, and not by the lawe of God, onlesse it be taken ꝑ the lawe of the Churche is the lawe of god, as it is somtime taken to be, but not appropriatlye nor immediatelye, for that is taken appropriately to be ꝑ law of God, ꝑ is conteyned in scripture, ꝑ is to saye in the old testamente or in the newe. D. It is somewhat daungerous to saye ꝑ tithes be grounded onelye vppon the lawe of the churche, for some menne as it is sayde saye that mannes lawe bindeth not in conscience, and so they might happen to take a boldnes therby to deny their tithes. S. I trust there bee none of ꝑ opinion, and if there bee yt is greate pitye, And neuertheless they maye bee compelled in ꝑ case by ꝑ law of ꝑ churche to paye their tithes as wel as they shoulde bee if payinge of

of tithes were grounded merely vpon the law of God. D. I thinke well it bee as thou saiest and therfore I holde me cõtẽted therin. But I pray thee shew me thy mind in this questiõ, if a whole countrey prescribe to pay noe tithes for corne or hey, nor such other, whether thou thinke that ỹ prescription is good.

S. That question dependeth much vpon that ỹ is sayde before, for yf paying of the .x. parte bee by the law of reason or by the lawe of God, then the prescription is voide, but if it bee by the lawe of manne, then it is a good prescripcion so ỹ the ministers haue a sufficient porcyon beside. D. Jhon Gerson which was a doctour of diuinity, in a treatise ỹ he named Regule morales: saieth ỹ dismes be paid to priestes by the lawe of God. S. The woordes that he speaketh there of that mater be these (Solucio decimarum sacerdotib⁹ est de iure diuino quaten⁹ inde sustẽtent sed quo tã hanc vel illam assignare: aut in alios redditus commutare positiui iuris existit) That is thus much to say, ỹ paiyng of dismes to priestes is of the law of God, ỹ they may therby be susteyned but to assigne this porcion or that, or to chaunge it to other rentes, that is by the law positiue, and if it shoulde bee taken ỹ by that woorde, decimarum, which in English is called dismes or tithes ỹ hee ment the tenth part, and ỹ the tenthe parte should be payd for tithe by the lawe of God, then is the sentence ỹ foloweth after agaynste that saying, for as it appeareth aboue, ỹ text sayth afterward thus, but to assigne this porcion or that or to chaunge it into other rentes belongeth too the

the lawe positiue, ꝑ is to the lawe of man, and if the .x. part were assigned by God, than may not a lesse part be assigned by the lawe of manne for ꝑ should be cõtrary to ꝑ law of God, & so it shoulde be voide. And mee thynketh ꝑ it is not likelye ꝑ so famous a clarke woulde speake anye sentence contrary to the lawe of God, or contrary to ꝑ he had spoken before, & to proue he ment not by the terme decime, that dismes should alway be takē for the tenthe parte, it appearethe in the .iiij. parte of his workes in the .xxxij. title littere, where hee saith thus. (Non vocat porcio curatis debita ꝓ terea, decime: eo quod semper sit decima pars immo est interdū vicesima aut tricesimo.) That is to saye, the porcion due to curates, is not therefore called dismes, for ꝑ is alway the tenth parte for sometime it is the .xx. or the .xxx. parte and so it appeareth that by this worde decimarum, hee ment in the text before rehearsed a certaine porcion, and not precisely the .x. part, and that the porcion should be payd to priestes by ꝑ law of God, to sustaine them with, takyng as it seemethe the law of reason in that sayng, for the law of God as it may one way bee wel and conueniently taken: because the law of reason is geuen to euery reasonable creature by god. And thā it followeth pursuantly ꝑ it belongeth to the lawe of manne to assigne this porcion or that as necessitye shall require for their sustenaunce, and than hys sayyng agreeth well to that ꝑ is sayde beefore that is to saye, ꝑ a certaine porcion is due for priestes for theire spirituall ministracion by the lawe of reason. And than it would follow thereuppon ꝑ &

tythes

yf it were ordeined for a lawe that all payinge of tithes should from henceforthe cese and ỹ euerye curate should haue assigned to him such certaine portion of lande, rent or annuitie, as shoulde bee sufficient for him, & for such ministers as should bee necessarye to bee vnder him, according to the number of the people there, or that euerye parysshene or housholder should geue a certaine of money to that vse: I suppose the lawe were good. & ỹ was the meanynge of John Gerson as it seemeth in his woordes before rehearsed, where he saith, but to chaunge tithes into other rentes ys by the law positiue, that is to say, by the lawe of man. And some thinketh ỹ if a whole countreye prescribe to be quite of both tithes of corne or grasse, so ỹ the spiritual ministers haue a sufficient porciõ beside to liue vpõ, ỹ is a good prescripcion, and ỹ they should not offend, ỹ in such cõtreis paid no tithes, for it weare harde to saye ỹ al ỹ mẽ of Italy, or of ỹ East parties bee dampned because they pay no tithes, but a certain porcion after ỹ custome, therfore certain it is to pay such a certaine porcion as well they as all other bee bound, if the church aske it, any custome notwithstandinge, but if the Churche aske it not, it semeth ỹ by the not askynge the churche remitteth it, and an example therof wee may take of ỹ apostle Paule, ỹ thoughe hee might haue taken his necessary liuing of them that hee preached to yet he toke it not, and neuertheless they ỹ gaue it him not did not offend, because he did not aske it, but if one man in a towne would prescribe to be discharged of tithes, of corne & grasse, me thinketh

ranged into rot

Astrigo

Italy East pts

Cumyng asking

remitted

Paules

not offend

Astrigo

keth ꝯ preſcripcion is not good, onles he cā proue ꝯ he recōpēſeth it in an other thing, for it ſemeth not reaſonable ꝯ he ſhould pay ieſſe for his tithez then his neibours dooe, ſeing ꝯ the ſpiritual mi= niſters ar bōūd to take as much diligēce for him as they be for any other of ꝯ pariſh, wherefore it might ſtād w realō ꝯ he ſhold be cōpelled to pay his tithes as his neighboꝛs do, onles he cā proue ꝯ he paieth in recōpence therof moꝛe than the .x. part in an other thing. Neuertheleſſe I leaue ꝯ matter to the iudgement of other, & then for a fur ther proſe ꝯ the ſaid preſcripcion of not paying ti thes for trees of xx. yere oꝛ aboue though it were not good of coꝛne & graſſe ſhould be good cōe ma ke this reaſon, they ſay ꝯ there is no tithe but pt is either a predial tithe, a pſonal tithe, oꝛ a mixte tith, & they ſay ꝯ if a tith ſhould be paied of trees when they be ſo ſold, ꝯ that tithe were not a pre= dial tithe, for the predial tithe of trees is of ſuche trees as bring forth fruits and encreaſe yearelye as apple trees, nut tree, pere trees, and ſuche o= ther wherof the predial tithe is the appels, nuts, peares & ſuche other fruits as come of thē yerely & when the fruits be tithed: if the owner after ſel ꝯ trees, ther is no tithe due thereby, for .ij. tithes may not be paid of one thing, & of theſe tithes ꝯ is to ſay, of predial tithes was ꝯ cōmaundement geuen in the old law to the Iewes, as appereth Leuitici. xxvij. where it is ſaid (Omnes decime terre: ſiue de pomis arboꝛū: ſiue de frugibus, do= mini ſunt: & illi ſanctificantur) ꝯ is to ſaye all ti= thes of the earth, eyther of appels of trees, oꝛ of graines be our loꝛdes, & to him they be ſanctified and

wherfor
diligens
compelled
trees
ꝯ diall
ꝯ ſmall
mixte
trees,
fruits
apples &
ꝯ diall
2. tithes
fallen
trees

Comit .27. tithes of earth, trees
apples, graines. ſanctified

almanor of frute tythes

tythes

and though ỹ said law speaketh onely of appels, yet it is vnderstand of all maner of fruites. And because it saieth ỹ al the tithes of the earthe bee our lords, therefore calues, lambes, & suche other must also be tithed, & they be called by some men predial tythes, ỹ is to saye. tithes ỹ come of the grou̅d howbeit they call th̄e onely predialles medtate, & theye be ỹ same tithes ỹ in this writing be called mixt tithes, and the other tithes (that is to saie, tithes of appels and corne, and such other be called predials immediate, for they come immediately of the grounde, and so do not mixte tythes as euidently appeareth.

Pdiall mediats

immediat mixte

D. But what thinkest thou shalbe the predial tithes of asshes, elmes, salowes, alders, & such other trees as beare no fruites, wherof any profit cōmeth, why shall not the .x. part of the self thīg bee the tithe therof if thei be cut down as wel as it is of corne and grasse.

Pdiall tythes elmes &c

D. For I thinke that there is to that intente great diuersitie betwene corne, grasse, and trees, and that for diuers consideracions, whereof one is thys. The propertie of corne and grasse ys not to growe ouer one yeare, and if it do: it wyll perish & come to nought, & so the cutting downe of it, is ỹ perfeccion and preseruacion therof, and the speciall cause that anye encrease foloweth of the same. And therefore the .x. parte of ỹ encrease shall bee payde as a predial tythe, and there noe deduction shalbe made for ỹ charges of it, and so it is of sheepe and beastes ỹ must be taken and killed in time, for els they maye perishe and come to naught. But when trees bee felled: ỹ feilynge

ppertie of Corne

ppertion

Pdiall.

deduction of charge

is

is not the parfeccio of the trees, ne it causeth not them to encrease but to decay, for most commonly the trees would be better if they might growe still. And therfore vpon that that is the cause of the decaye and destruccion of thē it semeth there can no prædicall tithe rise, and some men say that this was the cause why our Lorde in the sayde chapiter of Leuitici xxvii. gaue no commaundement to tithe the trees, but the fruites of ẏ trees onelye. D. It appearethe in Haralapo. xxxi. ẏ the Jewes in the time of the kinge Ezechias offered in the temple all thinges that the ground brought forth & that was trees as well as corne and grasse.

S. It appeareth not that they did, that by the commaundemente of God and therfore it is lyke that they did it of their owne deuocion and of a fauoure that they had aboue their dutie to ẏ repairing of the temple which the kyng Ezechias had then commaunded to be repaired and so that text proueth nothing that tithe shoulde bee paide for trees, and therefore they saye farther that trouthe it is that if a man to the intent he would pay no tithe, woulde wilfullye suffer his corne & grasse to stande still and perish, he should offende conscience therby, but though he suffer his trees to stande still cōtinually without felling because he thinketh a tythe woulde bee asked if hee felled them (so that hee doe it not of an euyll will of the curate) he offendeth not in conscience, ne he is not bound to restitucion therfore as he shoulde bee if it were of corne and grasse as before appeareth and another diuersitie is this. In thys case of

tithe wood, that tithe thereof would serue so lyttle to that purpose that tithes be paide for: that it is not likely that they that made the law for payment of tythes entended that anye tithe shoulde bee payde for Trees or Woode, for the spirituall ministers muste of necessitie spende dayelye and weekelye, and therefore the tythes of Trees or Woode that commeth so seldome wouide serue so litle to the purpose that it should be paid for that it wouide not helpe them in theire necessitie so ꝑ if they should be dryuen to truste thereto though it might helpe him in whose tyme it should happen to fall, yet it shoulde deceaue them that trusted to it in the meane tyme, and also shoulde leaue the parishe withoute anye to minister to them. D. I woulde well agree that for trees that beare fruit there should no predial tithe bee paide when they be solde, for the predialL tithe of them is the fruites that come of thē & so there cannot bee two predialles of one thynge as thou hast saide. But of other trees that beare no fruite me thinketh that a predial tithe should be paide when they be solde, and so it appearethe that there ought to be by the constitucion prouinciall made by the reuerend father in god Robert Wincheise late archbishop of Cāterbury wher it is saide & declared that (silua cedua) is of euerye kinde of trees ꝑ haue being in that ꝑ they should be cut or that bee able to be cut, wherof wee will saith he that the possessour of the saide woods be compelled by the censures of the Church to pay to the parishe church, or mother church the tythe as a reall or predial tithe & so by vertue of ꝑ constitu-

wall or ꝑdiall

stitucion prouinciall a predial tyth must be paid of such trees as haue no fruite, for I would wel agree that the said constitucion prouincial stretched not to trees ỹ beare fruites though ỹ wordes be generall for all trees as before apperethe.

S. I take not the reason why a predial tythe shoulde not bee paide for trees that beare frupte to bee because two predial tythes canne not bee paide for one thinge, for when the tithe is payde of Lambes yet shall tythe bee paide of woolle of the same shepe for it is paide for another increase and so it might be saide that the fruite of a tree is one increase and ỹ felling another, but I take ỹ cause to be for the two causes before rehearsed & also forasmuche as the felling is not properly an increase of the trees but a destruccion of the trees as it is saide before. And farther I would heare thy mynde vpon the saide constitucion prouinciall which wil that tithe shoulde be paide for trees by the possessoures of the woode that if the possessoure sell the woode for C.li and geeue ỹ byer a certayne tyme to sell it in, what tythe shall the possessoure paye as long as the woode standeth.

D. I thinke none for the predial tithe cometh not till the wood bee felled and a parsonall tythe he cannot pay, no more than if a mā plucke down his house and selleth it, or if he sell all his lande, in whiche cases I agree well he shall paye no tythe neither personal nor predial.

S. And then I put case that the byer selleth the wood a gaine as it is standing vpon the grounde to another for. CC.li. what tith shalbe paide than.

D. Than ỹ first bier shal pay tith of ỹ surplusage ỹ

y.li. he

byer shall agayne tythe of ỹ surplusage

tythe of trees that haue no fruite

predial for lambe wulle other increase

destructio of trees

Collect

predial personal for lande solde

Lorde

he taketh ouer the.C.li. that he payde as a parsonall tythe. S. And then if the secound byer after that cut it downe and sell it whan it is cut downe for lesse than he paid, what tithe shal then be paide.

D. Then shal he that selleth them pay the tithe for the trees as a prediall tythe.

S. I cannot see howe that can bee for he neither hath the trees that the prediall tythe shoulde bee payde for if anye oughte to bee payde, nor hee ys not possessour of the grounde where the trees growe: and therefore if anye predial tithe should bee payde it shoulde be payde either by the firste possessoure by reason of the wordes of the said constitucion prouinciall which be that the tithe shall be paide by the possessour of the woode, or by the laste byer because he hath the trees that should be tythed & by the first possessour the tithe cannot be paide as a predial for hee cut not them downe ne they were not cut downe vppon his bargaine, & by ye last byer it cannot be paied neither as a predial tithe for the saide constitucion saith that the possessoures of the woodes shoulde be compelled to pay it. And therfore I suppose that the truthe is that in that case no tithe shalbee paide, for as to the laste seller he shal pay no parsonal tithe for he gained nothing as it appeareth before and no predial tithe shalbe paide, for it should be against the said prescripcion, and also the cutting downe is the destruccion of trees and not theire preseruacion as is saide before.

D. Than takest thou the saide constitucion to be of small effect as it seemeth. S. I take

ꝑsonal tithe

ꝓdial trees

possessour of ye grounde first

constitucion prouinciall

bargaine

fallen trees

repelled

gayne nothing

I take it to be of this effect that of woode aboue twentye yeare it byndeth not because it is cõtrarye to the common lawe and to the said prescripcion that standeth good in the common lawe but of woode vnder. xx. yeare whereof tythe hathe beene accustomed to be paide: the constitucion is not againste the sayde prescripcion because paying of tythe vnder xx. yeare, is not prohibite but suffered by the saide statute howbeit some saye that by the very rigour of ỹ common law tithes shoulde not be paide for wood vnder xx. yeare no more then for aboue twenty yeares and that prohibicion in ỹ case lyeth by the common law, neuertheles because it hath ben suffered to the cõtrary and that in many places tuth hath ben paid thereof. I paste it ouer, but where tythe hathe not be paide of woode vnder xx. yeare I thynke none oughte to bee payde at this day in law nor conscience: but admitte it ỹ the saide constitucion taketh effect for paiment of the woode vnder xx. yeare as of a predial tithe, yet I cannot see howe the tithe thereof shoulde bee payde by the possessoure of the woode if he sell the but ỹ it shoulde be paide rather by him ỹ hath the trees, for the constitucion is that the tythe shalbee payde as a reall or a predialle tythe, and that is the x. parte of the same trees as it is of corne, and if a man bye corne vppon the grounde the byer shall paye the tythe and not the seller and so it shoulde seeme to bee heare, and what the constitucion mente to decree the contrarie in tythe woode I cannot telle vnlesse the meaninge were to enduce the owners to payt tithes of great trees when they

fel thē to their owē vse which me thinketh shuld be very hard to proue to stand with reasō though the said statut had neuer be made as I haue said before. And furthermore I would here vnder correccion moue one thinge and that is this that as it seemeth they that were at the makinge of the saide constitucion that knewe the saide prescripcion did not folowe the dyrecte order of charitye therein so perfectlye as they might haue don for when they made the saide constitucion prouinciall, directlye againste the saide prescripcion, they set lawe againste custome, and power agaynste power and in manner the spiritualtye agaynste the temporaltye, whereby they might wel know that great variaunce and sute should folow, and therfore if they had clerely seene that the said prescripcion hadde beene againste conscyence they shoulde first haue moued the king and his counsell & the nobles of the realme to haue assented to the reformacion of that prescripcion and not to make a lawe as it were by auctoritie & power againste the prescripcion & than to threate ỹ people & make them beleue that they were all accursed that kept the saide prescripcion or that maintaine it, and it seemeth to stand hardly with conscience, to reporte so many to stande accursed folowynge of the saide statute and of the saide prescripcion as there doe and yet to dooe no more than hathe be done to bring them out of it. D. Mee thinketh that it is not conuenient that lay men should argue the lawes and the decrees or constitucions of the Churches & therefore it were better for thē to geeue credence to spirituall rulers that haue cure

cure of theire soules then to trust toe theire owne opinions, and if they would do so then such matters woulde muche the more rather cesse than they will do by suche reasoninges. S. In that that belongethe to the articles of the faythe, I think the people bee bounde to beleeue the churche, for the churche gathered togethere in the holye ghoste cannot erre in such thinges as belong to the Catholike faithe, but where the Churche maketh any lawes whereby the goods or possessions of the people maye bee bounde, or by thys occasion or that may be taken fro them there the people may lawfully reason whether the lawes byndeth them or not for in such lawes the churche maye erre and bee deceiued and deceiue other either for singularitie or for couetice or some other cause, and for that consideracion it partayneth most to them that bee learned in the lawe of the Realme to know suche lawes of the church as treate of the orderinge of landes or goodes & to see whether they maye stande with the lawes of the realme or not and therefore it is necessarye for them to knowe the lawes of the church that treate of dismes of executours of testamentes of legacies bastardye matrimony and diuers other wherin they be bounde to knowe when the lawe of the churche must be followed & when the lawe of the realme, wherof because it is not oure purpose to treat. I leaue to speake any more at this time, and will resort agayne to speake of tythes. wherin sõe mẽ say ẏ of Tin, cole & Lede, no tith should be paide when they be solde by ẏ owner of the grounde because it is part of the inheritance.

reasoninge reason faithe Catholike remayne good possession bounde Error singularitie cause lawes diuers Ecclesiasticall bastardy matrimony cause of reasons

no tythe of Tinne, cole, & ouerdo
yt of inheritance.

and it is more rather a destruccion of the enheritaunce then an encrease: and therefore they saye that if a man take a Tinne woorke and geue the Lorde the tenth dyshe accordynge to the custome that the Lorde shall paye no tythe of that tenthe dish neither predial nor parsonal, but if the other that taketh the woorke haue gaines and aduantage by the woorke it seemeth that it were not against reason that he should pay a parsonal tithe of his gaines the charges deduct.

D. I pray thee shewe me first what thou takest for a parsonall tythe and vpon what ground parsonal tithes be paide as thou thinkest so that one of vs mistake not another therin.

S. I wil with good will and therfore thou shalt vnderstand that as I take it personall tythes be not paide for any encrease of ỹ grounde, but for suche profite as commeth by the laboure or industrie of the parsone, as by byinge and sellinge and suche other, and suche parsonall tithes as I take it, must bee ordered after the custom, and the churche hath not vsed to leuye those tythes of compulsion but by conscience of the parties neuertheless Raymond saith that it is good to paye parsonall tythes or with the assent of the parsonne to distribute them to poore menne, or els to paye a certeine porcion for the whole, but as Innocen saithe where the custome is ỹ they should be payde the people be bounde to paye thē as well as prediales, the expenses deduct, howebeit in the church of England they vse to sue for such parsonall tythes as well as for predyalles & that is by reason of the constitucion prouincial that

that was made by Robert Wynchelsy late archbishoppe of Cauntorburye by the which it was ordained that parsonal tithes shoulde be paide of craftes and marchandise, and of the lucre of byinge and sellinge, and in likewise of carpenters, Smithes, weauers, Masons, and all other that worke for hyre that they shal paye tithes of their hire except they will geue anye thinge certaine to the vse or to the lyghte of the Churche yf it so please the parson, and in another place the sayde Archebishoppe sayethe that of the powmage of woodes and suche other thinges &c. and of fysshinges, trees, bees, doues, and of dyuers other thinges there remembred, and of craftes, and of byng and selling of the profites of diuers other thinges there resited, euery manne should holde satisfye competentlye to the church, to the which they bee bounde to geeue it of righte, no expences by the geuing of the sayde tythes deducte or withholden but onlye for the paiment of tythes of craftes & of bying and sellyng, & by reason of the saide constitucions prouincialles sometime sutes be taken in the spirituall courte for parsonall tythes and therof many men doe maruaile, because deductions many times must bee referred to the conscience of the parties. And they maruayle also why a lawe shoulde bee made in this Realme for payinge of parsonall tythe more than there is in other countreys. And heare I would gladly moue thee farther in one thinge concerninge suche parsonall tythes to knowe thy minde therin and that is, if a manne geue to another a horse and he selleth that horse for a certeine sume shall he

he pay any tithe of that summe. D. what thynkest thou therin. S. I think that he shal paye no tythe, for there as I take it the profite commeth not to him by his owen industry but by the guift of another, and as I take it parsonal tithes bee not payde for euerye profite or aduauntage that commeth newely to a manne except it come by his owne industrye or labour and so it doothe not here. And also if he should paye tythe of that he solde the horse for: he shoulde pay tythe for the very whole value of the thinge. And as I take it: the parsonall tithes for buyinge and sellynge shall neuer be paide for the value of the thynge but for the cleare gaynes of the thynge, and therfore I take the cases beefore rehearsed where a manne selleth his lande or pulleth downe a house & selleth the stuffe, that hee shoulde there paye no tythe, that it is there to bee vnderstande that hee hath that lande or house by guyfte or by dyscent, for if a man buy land, or buy timber & stuffe of a house and sell it for a gaine, I suppose that hee shoulde paye a parsonall tythe for that gaine and this case is not like to a fee or annuitie graunted for counsaile where the whole fee shalbe tythed, for the charges deducte or some certaine summe for it bee agreement, for there the whole fee cõmeth for his counsaile whych is by his owne industrie. But in the other case it is not so, and the same reason as for the personall tithe myghte be made of trees when they descende or be geuen to any manne and he selleth them to another that he shal pay no parsonall tythe. D. Me thinketh y if the horse amend in his keping & then he sell the

the hoꝛſe, that then the tithe ſhalbee paide of that ꝑ the hoꝛſe hath encreaſed in value after ꝑ guyfte & ſo it may be of trees ꝑ he ſhal pay tithe of that, that ꝑ trees may bee amended after the guifte oꝛ diſcent. S. Than the tithe muſt bee the x. parte of ꝑ encreaſe ꝑ expenſes deduct, & then of trees ꝑ charges muſt alſo be deduct, foꝛ it is than a parſonal tithe, & there is no tree ꝑ is ſo much woꝛth as it hath hurt the ground by the groẅing there foꝛe there can no parſonall tythe bee paide by the owner of the ground when he ſelleth thē though they haue encreaſed in this time. Neuertheleſſe I will ſpeake no farther of that matter at thys time but ẅil ſheẅ thee ꝑ yf Tinne, Lede, Cole, oꝛ trees be ſolde ꝑ a mixt tithe cannot grow ther by, foꝛ a mixt tithe is ꝓperly of Calues, Lambes, Pygges, and ſuch other that come part of ꝑ ground that they be fedde of, and part of the kepinge, induſtrie and ouerſight of the owners as it is ſaide beſoꝛe, but Tinne, Leade, & Cole are parte of the ground and of the free holde, & trees groẅ of themſelfe, & bee alſo annexed to the freeholde and ẅill groẅe of themſelfe & alſo ꝑ mixte tythe muſt be paide yerelye at certaine times appointed by the laẅ oꝛ by cuſtome of the countrey but it may happē ꝑ Tinne, Lede, Cole & trees, ſhal not be felled noꝛ taken in many yeres, & ſo it ſemeth it cannot be any mixt tithes, and theſe bee ſome of the realōs ẅhich they that ẅould maintaine that ſtatute and preſcripcion to bee good: make to ꝓue their intent as they thinke. D. What thinke they if a man ſell the loppes of hys ẅood ẅhether any tythe ought there to be paid.

S.

tithe of loppes of trees

S. They thinke all one lawe of the trees and of the loppes.

D. And if he vse to kell the loppes once in .xii. or xvi yere, what holde they than. S. That is all one. D. And what is theire reason why tithe ought not to bee paide there as well as for wood vnder xx. yere. S. For they saye that the loppes are to bee taken of the same condicion as the trees bee what tyme so euer they be felled, and that no custome will serue in that case agaīst the statute, no more than it shoulde doe of greate trees. D. And what holde they of the barke of the trees. S. Therein I haue not harde their opinions, but it seemeth to bee one lawe w̄ the loppes. D. I perceaue well by that thou hast said before that thy mynde is that if a whole countrey prescribe to bee quite of tithes, of trees Corne, & grasse, or of anye other tithes, that that prescripcion is good, so that the spirituall ministers haue sufficient beside to liue vpō, doest thou not meane so. S. yes verely.

.16. or .20. yere.

loppes holdīg of trees barke

ꝓscripcō

D. And then I would knowe thy mynd if anye manne contrarye to that prescripcion were sued in the spirituall court for Corne & Grasse or any other tythes whether a prohibicion shoulde lye in that case as it did after thy mynde before the saide statute where a manne was sued in the spirituall courte for tythe wood.

ꝓhibicon

S. I thynke nay. D. And why not there as well as it did where a manne was sued for ye tythe wood. S. For as I take it there is great diuersitie betweene the cases & that for this cause, there is a maxime in ye lawe of England ye

if anye

if any sute be taken in the spirituall court wher= by any goods or lādes might be recouered, which after the groundes of the lawe of the Realme ought not to bee sued there thoughe parcase the kinges court shall holde no plee therof, that yet a prohibicion shoulde lye and after whan it hadde cōtinued long that no tithes were paied of wood because of the saide prohibicion and that after by processe of time some curates beganne to ask ty= thes of wood contrarye to the lawe and contra= ry to the saide prescripcion so that variaunce be= ganne to rise betwene curates & their parishens in that behalfe, than for appeasing of the said va= riaunce, the saide statute was made, and that as it semeth more at the callinge on of the spiritual= tye than of temporaltie, for the statute dothe not expressely graunt that the prohibicion in that case of tith woode should lye so largelye as some saye it laye by the lawe: howe bee it, it dooth not re= straine the common lawe therein as it appereth eupdently by the wordes of the statut, and so af= ter some menne it appeared before the statute and also after the statute as I haue touched before that the spirituall court ought not in that case to haue made anye processe for tythe woode: & ther= fore if they did a prohibicion lay by the common lawe: and like law is if the spirituall court make processe vpon such a legacy as by the law of the realme is voide. As if a man bequeth to one an= other mannes horse, and the Spirituall courte thereupon maketh processe to execute that lega= cye, there a prohibicion lyeth for it appereth eui= dently in the libell if all the trouth appeare in the

libell

lybell that in the lawe of the Realme the legacye is voide to all intentes. And that hee to whome the legacye is made shall neither haue the horse nor the value of the horse. And in lykewise if a man sell his lande for .C.li. and hee is sued after in the spirituall courte for tythe of the saide .C.li. There a prohibicion shall lye, for it appeareth in that case openlye in the libell that no tythe ought to be paide, and that the spirituall lawe ought not in that case to make anye processe whereby the goodes of him that solde the lande might bee taken fro him against the lawe of the Realme, and vppon this grounde it is that if a man were sued in the spirituall court nowe sith the statute for a mortuarie ꝧ a prohibicion should lye, for it appeareth in the lybell: that saith the statute there ought no suyte to bee taken for mortuaries, and ꝧ same lawe is if any suite were taken in the spirituall courte for a newe duetie ꝧ is of late taken in some places vppon leases of parsonages and vicarages whyche is called a dimission noble, for it appeareth euidently in the lybel if any be made thereupon that no such processe ought by ꝧ lawe of the realme to bee made in that behalfe, but in the case of tythe corne, or grasse, or suche other thinges, wherein thou hast desired to knowe my mynde, there appeareth nothynge in the libel but ꝧ the suyte thereof of ryghte appertaineth to the spirituall lawe and so for anye thing that appeareth the partye maye bee holpen in the spirituall court by the prescription, and if the case were so farre put ꝧ in the spiritual court they would not allowe ꝧ said prescripcion, yet I thinke no prohibicion

legacy

pol lande

title ꝓhibiō

mortua rio

libell

nowe duties

parsonage dimission noble

spiritual

prescripcion

hibicion ſhould lye, for though the ſpiritual iudges in a ſpirituall matter deny the parties of iuſtice, yet the kinges laWes cannot reforme that, but muſt remit it to their cõſcience. But if there Were ſome remedye prouided in that caſe it Were Well doone, for ſome ſaye that in the ſpirituall court they Wil admit no plee againſt tithes. And alſo if a compoſicion Were made by aſſente of the patrone and alſo of the ordinarye betWene a parſon & one of his pariſhens that the perſone & hys ſucceſſoures ſhoulde haue for a certeine grounde ſo many quarters of corne for his tythe yearely, & after contrary to the compoſition the parſon in the ſpirituall court aſketh the tithes as they fal, that in this caſe no prohibicion ſhould lye, ne yet thoughe the caſe Were further putt that the compoſicion Were pleaded in the court and Were diſalowed, but all reſteth in the conſcience of the Iudges ſpirituall as is ſaid before how be it becauſe ſome be of oppinion ẏ a prohibicõ ſhoulde lye in this laſte caſe, therefore I Wyll referre it to the iudgement of other, but in the caſe of the preſcripcion before rehearſed, I take it for the clearer caſe, ẏ no prohibicion ſhal lye as I haue ſaide before. And I beſeche our Lorde that thys matter and ſuch other like therto may be ſo charitably looked vpon that there bee not hereafter ſuche diuiſions ne ſuche diuerſities of oppinions therein as hathe beene in time paſte Whereby hathe folowed greate coſtes and charges to manye parſones in thys Realme and that hath moued mee to ſpeake ſo farre in thys Chapiter, and in dyuers other Chapiters of thys preſente booke

Spiritual iudges denye iuſtice

quarters of Corne

pleaded

prohibicion

charitably loked on

opinions

great charge

Herefore ſpoken of thys Chapiter in the booke

booke as I haue done, not intending thereby to geue occasion to any person to ẅholde his tithes that of right ought to be paide, ne to alter ẏ porcion therin before accustomed but that as me thinketh they ought to bee claimed by the same tytle as they ought to be paied, and by none other, and that it may also somewhat appere that the saide statute of .xlv. of Edward the thirde was well & lawfully made & vppon a good reasonable consideracion, & that the said prescriptiō is good also, so that no man was in anye daunger of excomunicacion for the making of the saide statute, nor yet is not for the obseruinge thereof, ne yet of the saide prescripcion as it is noted by some persons that there should bee. And thus I commit thee vnto our lord who euer haue bothe thee & mee in his blessed keping euerlastingly. Amen.

Finis.

Here endeth the seconde Dialogue in English with new Addicions betwixt a Doctour and a Student in ẏ lawes of England. And hereafter foloweth the Table.

(.)

¶Here after folowth the table to the fyrste Booke with certain addicions newlye added thereto and ouer all the chapters and questiõs whiche be newly added: ye shal finde entitled this word Addicion, both in the table and also in the booke.

The introduction,

Of the law eternall. chap. i.

Of the lawe of reason, ỹ which by Doctours is called the lawe of nature of reasonable creature. chap. ii.

Of the lawe of God. chapt. iii.

Of the law of man. chapt. iiii.

Of the first ground of ỹ law of England. cha. v.

Addicion

Of the. ii. ground of the law of England. cha. vi.

Of the. iii. ground of the law of England. ca. vii.

Of the .iiii. ground of ỹ law of England. cha. viii

Of diuers cases wherin the Student doubteth whether they be only maximes of the law: or ỹ they be grounded vpon ỹ law of reason. chap ix.

Of the, v. ground of the law of England. chap. x.

Of ỹ vi. ground of the law of England. chap. xi

The first question of the doctour: of the lawe of Englande and Conscience. chap. xii.

What sinderesis is. chapt. xiii.

Of reason. cha. xiiii.

Of conscience. chap. xv.

What is Equitie. chap. xvi.

In what maner a man shalbe holpen by equities

in the lawes of England. chap. xvii
Wheather the statute hereafter rehearsed by the Doctour be against conscience or not chap. xviii.
Of what law this question is to be vnderstand, ꝑ is to say where conscience shalbe ruled after ꝑ lawe chap xix.
Addicion.
Addicion.
Of diuers cases, where conscience is to bee ordered after the law. chap. xx
Addicion.
The first question of the student. chap xxi.
The second question of the student. chap. xxii
The third question of the student. chap. xxiii
The fowerth question of ꝑ student chap. xxiiii
The fifth question of the student. chap xxv.
A question made by the Doctour, how certaine recoueries ꝑ be vsed in ꝑ kings courtes to defete tailed lād may stand with conscience. ca xxvi
The first question of the Student, concernyng tailed landes. chap, xxvii.
The second question of the student concernynge tailed landes ca. xxviii.
The third question of the Student concernynge tailed landes. cha. xxix
The fowerth question of the student concernynge recoueries of enheritaunce entailed chap xxx
The fifth question of the Student concernynge tayled landes. chap. xxxi
The sixth question of the student concernynge tailed landes. chap xxxii
Addicion

¶ The end of the table to the first booke.

¶ Here

¶ Here beginneth the table to the second Booke.

The introduction.

The first question of ỹ student whether ỹ tenāt in taile after possibility of issue extinct may with conscięce do wast. chap. i.

What is vnderstād by this terme whan it is sayd thus it was at the comon law ca. ij.

The. ij. question of ỹ Student whether ỹ goods of men outlawed be forfeit in conscience as theye be by the law. chap. iij.

The. iij. question of the student, Is of wast done by a straunger in landes that be in the handes of particuler tenants &c. chap. iiij.

The. iiij. question of the student whether a man way & conscience be of counsel against him that he knoweth is the heire of right, but he is certified bastarde by the ordinary. chap. v.

The. v. question of the student whether a man may with conscięce be of counsell with a man at ỹ comō law knowing ỹ he hath sufficiēt matter to be discharged in the chaūcery that he may not plede at the common law. cap. vi.

The. vi. question of the student, whether a mā may with conscience be of counsel against the feffee of trust in an action of trespas ỹ he bringeth against his feoffee of trust for takynge the profites. cha. vij.

The. vii. question of the student if a man that by way of distres cōmeth to his det, but hee ought not to haue distrained for it, what restitution hee is bound to make. ca. viij

For what thig a mā may lawfully distreyn. ca. ix

The

The.viii.question of the student whether executors be bound in cõscience to make restitucio for trespas done by the testatour, & whether they be bound to pay dets vpõ a cõtract first, or make the said restitucion. cap.x.

The.ix.question of ỹ student, whether hee that hathe goodes deliuered him by force of a legacye be bound in conscience to pay a det vppon a contract ỹ the testatour ought if ỹ executours haue none other goods in their hands. ca.xi.

The.x.question of ỹ student if a man haue issue two sonnes and died seyled of certaine landes in fee the eldest dieth withoute issue ỹ yongest recouereth by assise of Wortdancester the land wyth damages fro the death of ỹ father, whether there he be-bound in conscience to paye the damages to the executours of ỹ eldest brother for the time he liued. chap.xii.

The.xi, question of ỹ student what damages the tenãt in dower shal recouer in cõscience where her husband died not seysed, but shee demaunded her dower & was denied. chap.xiii.

The.xii.question of ỹ student if a man knowyng another to haue right to his lãd causeth a fine & proclamacion to be leuied according to the statut & he ỹ hath right maketh no claime within fyue yeres wether he be barred in conscience as he is in the law. ca.xiiii.

The.xiii.question of the student if a man ỹ hathe had a child by his wife do that in him is to haue possession of his wifes landes & shee dieth or hee can haue it, whether in conscience he shal bee tenant by the curtesy. ca.xv

The.xiiii.questiõ of ỹ student, if the graun toure of

of a rent in feoffe ỹ graunte of the rent of parte of ỹ land &c. whether the whole rent bee extincte in conscience as it is in the lawe. chap xvi.
The .xv. question of the student, if hee that hath a rent out of two acres be named in a recouerye of ỹ one acre he not knowing therof &c. whether his whole rẽt be extinct in cõscience &c. ca. xvii.
The .xvi. question of ỹ student, if a manne haue a villein for terme of life and the villeine pourchaseth lands in fee & hee ỹ hath the villain entrethe whether he may with conscience kepe the landes to hi & to his heirz as he may by ỹ lawe ca. xviii.
The .xvii. question of the student if a man in the case next before enforme him ỹ is in the reuercio of the villain that after the deathe of the villaine hee hath right to ỹ land and counsailleth him to enter wherupon gret suit & charges folow what danger ỹ is to him ỹ gaue the counsel. cha. xix.
The xviii. question of ỹ student is vpon a feoffement made vpon condicion ỹ the feoffe shall pay a rent to a stranger, how ỹ feoffement shall wey in lawe and conscience. chap xx.
The .xix. question of the student is vpon a feoffement in fee, & it is agreed ỹ the feoffe shall pay a rent to a stranger, how the feoffement shal weye in lawe & conscience chap xxi
How vses in land began & by what lawe and the cause why so much land is put in vse. cha. xxii.
The diuersities betweene two cases wherof one is put in the .xx. chapter and the other in the .xxi. chapter of this present booke. chap. xxiii
What is a nude cõtract or a naked promise after the lawes of England, & wheather anye accion may lie therupon. ca. xxiiii

The xx. question of the ſtudent if a man ꝑ hathe two ſonnes one before eſpouſels, & the other after eſpouſels by his will bequeth to his ſonne & heire all his goodes, which of the ſonnes ſhal haue the goods in conſcience. chap. xxii.
Whether an Abbot may with conſcience preſent to an aduowſon of the churche ꝑ belongeth to ꝑ houſe without aſſent of the couent. cap. xxvi
If a man finde beaſtes in his corne doing hurte whether he may by his owen auctorite take thē & kepe thē til he be ſatiſfied for the hurt ca. xxvii.
Whether a gift made by one vnder ꝑ age of xxv. yere be good. chap. xxviii
If a man be conuict of hereſie before ꝑ ordinary whether his goods be forfeit. cap. xxix
Where diuers patrōs be of an aduowſō ꝑ church voideth the patrōs vary in their preſentmentes, whether ꝑ Biſhop ſhal haue libertye to preſente which of ꝑ incumbents ꝑ he will. chap. xxx.
Howe long time ꝑ patron ſhal haue to preſent to a benefice. chap. xxxi
If a man be excōmenged whether he may in any caſe be aſſoiled wout making ſatiſfaccō. ca. xxxii
Whether a prelate may refuſe a legacy. ca. xxxiii.
Whether a gift made vnder a condicion be voyde if the ſoueraigne onely breake ꝑ cōdicion. ca. xxxiiii
Whether a couenāt made vpon a gift to ꝑ church that it ſhall not be alienedbee good. chap. xxxv.
If the patron preſent not within vi. monethes, who ſhal preſent ca. xxxvi
Whether ꝑ preſentment and collacion of all benefices and dignities voiding at Rome belong only to the Pope. ca. xxxvii
If a houſe by chaunce fall vppon a horſe that is

Pope.

borowed who shal beare the losse. ca.xxxviij
If a priest haue wonne much money by sayinge Masse, whether hee may geeue those goodes or make a will of them. cha.xxxix.
Who shal succede to a clarke that dieth intestate. Addicion. (chap.xl.
If a man be outlawed of felony, or be attaynted for murther or felonye, or ꝑ is an Acisinus maye be slaine by euery stranger. cha.xli
Addicion.
whether a mā shalbe bound by the act or offence of his seruant or officer. chap.xlii.
Addicion.
whether a villein or bondman may geue awaye his goods. chap.xliii.
If a clark bee promoted to the title of his patrimony and after selleth hispatrimony & falleth to pouertie, whether hee shall haue his title therein. ca.xliiii
Diuers questions taken out by ꝑ student of the summes called Sūma rosella, & Summa angelica which me thinketh are necessarie to bee seene how they stande and agree with the lawe of the realme. cha.xlv.
Where ignorāce of the law excuseth in the lawes of England and where not. ca.xlvi.
Certain cases and groundes where ignorance of the dede excuseth in the lawes of Englande and where not. cha.xlvij.
Addicion.
The.i. questiō of the D. how ꝑ law of England may be said reasonable ꝑ ꝓhibiteth &c ca.xlviiii.
The.ii. question of the D. whether ꝑ warrāty of the yonger brother ꝑ is taken as heire because

it is not knowen but ꝯ the eldest brother is dead be in cõscience a barre to ꝯ eldest brother as it is in the law. ca.xlix

The.iii.question of the D. whether if a man procure a collateral warraunty to extinct a right ꝯ knoweth another man hath to lande bee a barre in conscience as it is in the law. chap.l.

The.iiii.question of the Doctour is of wycke of the sea. cha.li.

The.v.questiõ of the D. whether it stande wyth conscience to prohibite a Jury of meat & drinke till they be agreed of their verdit chap.lii.

The.vi.questiõ of ꝯ D. is wheather the colours ꝯ be geuen at the common law in assises, accions of trespas and diuers other accions stande wyth conscience because they be most cõmonlye feyned and not true. cha.liii.

Addition

The.vii.question of ꝯ D. cõcerneth the pleading in assise wherby the tenements vse sometyme to pleade in such maner ꝯ they shall confesse no ouster. cha.liiii.

The.viii.question of the D howe the statute ꝯ was made in the.xiv.yere of king Edwarde the third concerning the tithe of wood maye stande with conscience. ca.lv.

FINIS.

¶Londini in ædibus Richardi Tottelli. An. 1569.

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